By Mr. GREEN of Pennsylvania:
H.R. 14249. A bill for the relief of Pfc. James Watson, Jr., U.S. Marine Corps Reserve; to the Committee on the Judiciary.
By Mr. NIX:
H.R. 14250. A bill for the relief of Donald Hercules Hurdle; to the Committee on the Judiciary.
By Mr. MURPHY of New York:
H.R. 14251. A bill for the relief of Dr. Kai Ming Chen and his wife, Dr. Lilliam Chen; to the Committee on the Judiciary.
H.R. 14252. A bill for the relief of Dr. Dolores A. Y. Loew; to the Committee on the Judiciary.
By Mr. O'NEILL:
H.R. 14253. A bill for the relief of Alvaro and Berta Rios and their minor children; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

205. The SPEAKER presented a petition of employees in the offices of Representative JOHN E. Moss and other Members of the House of Representatives, relative to a boycott of eating facilities in the House Office Buildings, which was referred to the Committee on House Administration.

SENATE—*Wednesday, March 29, 1972*

The Senate met at 11 a.m. and was called to order by Hon. ADLAI E. STEVENSON III, a Senator from the State of Illinois.

PRAYER

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

Lord, make us instruments of Thy peace; where there is hatred, let us sow love; where there is injury, pardon; where there is discord, union; where there is doubt, faith; where there is despair, hope; where there is darkness, light; where there is sadness, joy. For Thy mercy and for Thy truth's sake, Amen.—ST. FRANCIS OF ASSISI, 12th century.

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 29, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ADLAI E. STEVENSON III, a Senator from the State of Illinois, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to a concurrent resolution (H. Con. Res. 571), providing for an adjournment of the House from March 29, 1972, until April 10, 1972, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 9526) to authorize certain naval vessel loans, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. STEVENSON).

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, March 28, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

The Senator from Connecticut is recognized.

(The remarks of Mr. RIBICOFF on the introduction of S. 3432 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

QUORUM CALL

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. 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.

ADJOURNMENT OF THE TWO HOUSES FOR EASTER

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 571.

The Presiding Officer laid before the Senate House Concurrent Resolution 571, which was read as follows:

H. CON. RES. 571

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Wednesday, March 29, 1972, it stand adjourned until 12 o'clock meridian, Monday, April 10, 1972.

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

There being no objection, the Senate proceeded to consider it.

Mr. MANSFIELD. Mr. President, I send to the desk an amendment and ask that it be stated.

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

The legislative clerk read the amendment as follows:

On page 1, line 4, strike out "1972." and insert "1972, and that when the Senate adjourns on Thursday, March 30, 1972, it stand adjourned until 12 o'clock meridian, Tuesday, April 4, 1972."

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Montana.

The amendment was agreed to.

The concurrent resolution (H. Con. Res. 571), as amended, was agreed to, as follows:

H. CON. RES. 571

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Wednesday, March 29, 1972, it stand adjourned until 12 o'clock meridian, Monday, April 10, 1972, and that when the Senate adjourns on Thursday, March 30, 1972, it stand adjourned until 12 o'clock meridian, Tuesday, April 4, 1972.

QUORUM CALL

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. ROTH. 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.

TAKE THE DEPARTMENT OF JUSTICE OUT OF PARTISAN POLITICS

Mr. ROTH. Mr. President, the very cornerstone of the American form of government is respect for the law by the citizens of this country. Anything that erodes public confidence in the law or the administration of justice under the law weakens the basis of our democracy.

Just as we must always be on guard against possible corruption of the judicial system, so, too, must we be constantly alert to the danger that political pressures may influence either judicial deci-

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

sions or the administration of justice in the executive branch of the Government.

The continuing investigation by the Senate Committee on the Judiciary into the International Telephone and Telegraph case has brought to our attention once again the serious problems that are presented when it is alleged that the administration of our laws may be influenced by political considerations.

While it is certainly important that we discover whether such allegations are based on fact, a matter of even greater importance, it seems to me, is the question of whether a situation should be permitted to exist which could give rise to such allegations.

Last week I expressed my thoughts on this matter in a letter to Acting Attorney General Richard G. Kleindienst. In my letter I stated:

It is my deeply held conviction that a new policy is called for, one in which the Attorney General makes abundantly clear that neither he nor officials of his department will in any way be involved in partisan politics.

My letter continues:

I strongly urge you to make your position clear on this point, not only because it would greatly assist the Senate in the confirmation process, but because it would go a long way toward removing the Department of Justice completely from the arena of politics.

Mr. President, I ask unanimous consent that my letter to Mr. Kleindienst, dated March 24, 1972, be printed in the RECORD.

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

MARCH 24, 1972.

Hon. RICHARD G. KLEINDIENST,
Acting Attorney General of the United States, Department of Justice, Washington, D.C.

DEAR MR. KLEINDIENST: Among the matters of gravest concern to the American people today continues to be the question of law and order; the safety of our citizens in their homes and on the streets, the protection of their families and property from harm or destruction, and the swift and fair administration of justice once an offender is apprehended.

This concern, I think, is deeply rooted in respect for the rule of law, a respect that is shared by the vast majority of American citizens. It is this respect for the rule of law and the fervent desire on the part of Americans to see the law upheld that forms one of the basic cornerstones of our democratic system. That foundation of democracy cannot remain strong if respect for the administration of justice under the law is eroded.

Inherent in any administration of justice that seeks to command the respect of our citizens is the absolute imperative that justice be meted out without favor. Short of outright corruption of the judicial system or malfeasance in office on the part of members of either the Judicial Branch of the government or the administrators of our laws, political favoritism would rank at about the top of the list of those things which would bring the integrity of the system into serious doubt.

I am greatly concerned at this point that the just administration of our laws be carried out without the taint of political favor or even the appearance of such favoritism. It is not difficult to see how an appearance of favoritism may be created even though none actually exists if Justice Department officials are known to be involved in partisan political activity.

On March 15, 1972, the New York Times carried a lead editorial, two paragraphs of which I would like to quote at this point:

"The politicizing of the Justice Department has been a dismal trend, engaged in by both parties for more than a generation. It is precisely because this course has been unchallenged by the Democrats and Republicans alike that sometimes even the most important officials become morally blind to its consequences.

"The result is a contagion of cynicism about the system and its institutions. When Government creates conditions which make it easy to abuse power, its citizens begin to condone corruption as a way of life. Such attitudes, particularly when they involve the Justice Department, subvert faith in Government by law."

It is not my purpose here to suggest any wrong-doing in the past on the part of officials of the Department of Justice, except to say that it is common knowledge that past Attorneys General have frequently served as top political advisers to the administrations of which they have been a part. The fact that this has occured under both Democratic and Republican administrations does not alter the fact that it is an unhealthy practice.

It is my deeply held conviction that a new policy is called for, one in which the Attorney General makes abundantly clear that neither he nor officials of his department will in any way be involved in partisan politics.

I strongly urge you to make your position clear on this point, not only because it would greatly assist the Senate in the confirmation process, but because it would go a long way toward removing the Department of Justice completely from the arena of politics. To the extent that that has been achieved, I believe that greater public respect for the integrity, not only of the present Administration, but for the American democratic system of government itself, will swiftly follow.

I would appreciate your prompt response to this request for clarification of your position on the question of political involvement by Justice Department officials.

Sincerely,

WILLIAM V. ROTH, Jr.,
U.S. Senate.

Mr. STEVENS. Mr. President, the hearings before the Judiciary Committee on the qualifications of Mr. Richard Kleindienst to hold the office of Attorney General have gone far afield.

What we are now witnessing is a fishing expedition seemingly motivated by an attempt to make a political advantage of these hearings.

The integrity of Mr. Kleindienst is not really the subject of the testimony being given.

As a matter of fact, I have known Dick Kleindienst since 1947 when we began law school together and our paths have crossed often during the intervening years. As a result of this association over a period of 25 years, I believe him to be a person of ability and integrity. It is my intention to vote for his confirmation as Attorney General and I ask the Judiciary Committee to end these hearings and permit this body to get on with the more serious business which we must complete before we recess for this year's conventions.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

(The remarks that Mr. JAVITS made at this point on the introduction of S. 3433 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

THE CRISIS OF PROTECTIONISM

Mr. JAVITS. Mr. President, there is great interest in the country respecting the crisis of protectionism in the United States as epitomized by the so-called Burke-Hartke bill which proposes to set quotas on practically all imports, as well as legislate sweeping and harsh tax changes on foreign subsidiaries of American corporations.

In that connection there is much to do to help workers and businesses who may be adversely affected by the heavy impact of imports concentrated in certain product lines. I have sought to find out from the Secretaries of Labor and Commerce what we are doing and could better do in our adjustment assistance program. I found out that these programs are totally inadequate. The help, if and when it does arrive, arrives years after the funeral. The fault in these programs lies more in the inadequacies of present laws, than in the adequacy in the administration of present laws—although this administration leaves much to be desired.

Mr. President, I am deeply interested in liberal trade as being essential to the continued prosperity of the free world and to the peace and future of our Nation. Similarly it is inexcusable for a mature and rich nation such as the United States not to have an adequate, and effective assistance program to workers and businesses who are very materially affected by a sudden descent upon them of imports. Other nations are far in advance to the United States in this area.

I have now received from the Secretaries of Labor and Commerce their analysis of what is wrong and how limited this assistance is. I ask unanimous consent that their letters be printed in the RECORD, and I shall do my utmost as we consider trade matters to change radically the approach to adjustment assistance so that instead of putting a very small amount of money in long after the fact, which is really quite ineffective, we try to find a truly effective way in which to help American workers and businesses which suffer serious injury respecting imports without thwarting or destroying the international economic policy of the United States that is so indispensable to the peace and prosperity of our country.

Our Nation's adjustment assistance programs must be reformed and strengthened. To be successful in the future, they must be based on practical criteria and they must successfully blend federally assisted R. & D. programs, selected provision of loan guarantee programs, selected use of tax incentives, selected provision of direct loans and better informational and evaluation systems.

I am pleased that the Secretaries of Commerce and Labor have assured me that a major interagency review of the whole program of adjustment assistance is underway with an eye toward submit-

ting new legislative proposals and reforming and expediting the system.

While the Congress and the Federal Government must concern themselves, more adequately, with the human problems caused by jobs that have been lost because of imports, we must also better protect those jobs that are threatened by a sudden increase in imports over a short period of time or that result from unfair foreign competitive conditions. However, we must do this without overturning and totally disrupting the international economic system as some legislative proposals would do. Toward this former end, we must enforce more conscientiously the laws, regulations, and international codes already on the books—the antidumping and countervailing duty laws and the articles of the GATT. We must rethink the function and trigger mechanism of the escape clause—at present there is little escape from serious injury from imports in the escape clause. One necessary change clearly is making injury a separate matter from past tariff concessions. We must also put into effect a functionary early warning system to insure that our Nation, or a State, or a community does not wake up one day to find that an essential industry is no more because of the sudden impact of imports.

There must be a beginning point and pending the passage of new legislation this beginning point could be in the area of adjustment assistance, although new legislative authority is also needed here if an effective program is to be mounted.

It is in this spirit that I wrote to the Secretaries of Commerce and Labor and in which I ask that my letter to them and their replies be printed in the CONGRESSIONAL RECORD.

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

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 20, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: I am happy to respond to the questions in your letter of February 22. My answers are enclosed. I agree that this material should be incorporated into my JEC testimony.

Sincerely,

J. D. HODGSON,
Secretary of Labor.

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1) Are there any inadequacies in existing law which deter an effective program of adjustment assistance? For example, is the law that requires the Secretary of Commerce and the Secretary of Labor to certify eligibility to apply for adjustment assistance after there already has been a Tariff Commission and/or Presidential determination of injury an anachronism which serves no useful purpose? Are there other examples of inadequacies of law which should be corrected?

In answering this and the subsequent questions, I shall confine my remarks to the worker side of the Trade Adjustment Assistance Program. I understand an identical set of questions has been presented to the Department of Commerce and I am sure that they can provide more accurate information on firm assistance.

There is little substantive overlap in the roles of the Tariff Commission and the Department of Labor. I believe the appropriateness of the Department of Labor's role in the Trade Adjustment Assistance Program will be clear from the following. There are two ways in which a group of workers can become eligible for trade adjustment assistance. The first is by petitioning the Tariff Commission directly. If the Tariff Commission makes an affirmative finding, the Department has relatively simple but necessary functions to perform. It must establish an impact date (the date beyond which imports can be considered the major factor causing unemployment or underemployment), it must define the adversely affected group; and finally, the Department must supervise the delivery of assistance.

Workers can also become eligible as a result of an industry petition. After an affirmative finding by the Tariff Commission, the President can (1) approve escape clause relief, (2) grant permission to workers within the industry to apply for adjustment assistance, (3) grant permission for firms in the industry to apply for adjustment assistance, or (4) provide for any combination of the first three forms of relief. If permission is given to groups of workers to apply for adjustment assistance, it is the responsibility of the Department of Labor, in addition to the roles noted above, to determine whether injury to a specific group from the industry is caused by increased imports.

Under the present statute these functions are necessary and are performed appropriately and efficiently by the Department of Labor. There are, however, certain inadequacies in the present law. The President's Trade Bill of 1969 tried to address some of these inadequacies, specifically the overly stringent eligibility requirements and the role of the Tariff Commission. Suggested changes have also been recommended in the July 1971 report of the President's Commission in International Investment and Trade Policy (the William's Commission). At the present time there is a Council on International Economic Policy Task Force, chaired by Under Secretary of Labor Silberman, studying the entire issue of adjustment assistance. About one-half of the Task Force's work has been completed. When their recommendations are presented, we will be in a much better position to propose remedies to the inadequacies of the present law. More importantly, we will understand more fully how trade adjustment assistance relates to U.S. trade policy and to domestic economic policy.

2) What is the time lapse between the application of firms or workers for eligibility to apply for adjustment assistance and the granting of such eligibility? For example, a constituent firm has indicated to me that after a 3–1 Tariff Commission vote in their favor, it took two months merely to receive certification that they were eligible to apply. How many cases are like this where bureaucratic delays prevent a meaningful and prompt program of adjustment assistance?

The Department of Labor can set an impact date and determine the affected group generally within 30 days in cases approved by the Tariff Commission. Somewhat more time is required to process a worker request for assistance following a successful industry petition. At present, the Department of Labor requires 60 days to gather the necessary information. Certifications are generally issued within 10–14 days following the completion of an investigation. In several instances investigation and certification have been completed within a 60 day period.

These are fairly simple procedures and we have learned to handle them expeditiously. However, there are other steps in the process of obtaining adjustment assistance where regrettable delays do occur. I will discuss these in greater detail under question 4.

3) Of the firms and workers which have applied for certification of eligibility, how many have received such certification?

As of March 1, 1972, there had been 136 cases in which worker groups filed for assistance under the Trade Expansion Act of 1962. Assistance was granted in 56 of these cases. It is useful to break down these totals in accordance with the distinction I made earlier. Direct petitioning of the Tariff Commission accounted for 123 of the cases and 44 of the approvals. Application by workers to the Department of Labor on the basis of a successful industry petition accounted for 13 cases and 12 approvals.

4) Of those receiving certification of eligibility to apply, how many received adjustment assistance? And of those receiving adjustment assistance, what was the time period between their application for eligibility and the granting of adjustment assistance?

In the 56 groups approved for assistance, there were 24,000 who could potentially receive assistance. Approximately 15,000 of these have received assistance. The remaining 9,000 either had no need for assistance or failed to apply for it.

The available information does not permit us to calculate an average time lapse between application to either the Tariff Commission or the Department of Labor for assistance and the initiation of assistance. We know that the time period is too long and and we are making diligent efforts to correct this problem. The two major delays occur (1) from the injury to the filing of an acceptable petition and (2) from the setting of an impact date by the Department of Labor to the actual delivery of assistance.

The Tariff Commission and the Department of Labor have been discussing ways of reducing the first delay. The Department of Labor has already begun to encourage likely applicants to file and has provided technical assistance to insure that a suitable petition is submitted. The Tariff Commission is considering reducing the information required in petitions and issuing a standard form.

Lack of familiarity with the program on the part of the State agencies which must administer it has been the most important cause of the delay in initiating payment. The Department of Labor has just completed an internal review designed to find ways to overcome this problem. The results of that study combined with more experience by the State agencies should lessen this delay.

5) Could you also inform the Committee of the nature, scale and level of adjustment assistance over the past five fiscal years on an FY year by FY year basis?

Since the first affirmative Tariff Commission finding was issued in November 1969, we need only consider the fiscal years, 1970, 1971, and 1972. The following table provides the data you requested.

[All figures in thousands of dollars]

Fiscal year	Total	Cash readjustment allowances	Training	Relocation	Administration costs
1970	2,886	2,830			56
1971	19,393	18,026	941	1	425
1972	15,537	13,803	710	4	1,020
Total	37,816	34,659	1,651	5	1,501

[1] Estimated through December 1971.

U.S. DEPARTMENT OF COMMERCE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 27, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR JACK: This is in response to your letter of February 24, 1972, concerning the trade adjustment assistance program. I understand a similar letter has been sent to the Secretary of Labor and that he is communicating with you directly regarding the adjustment assistance program as it relates to workers. In it you asked several specific questions, and I have tried to answer each of them in this letter.

Your first question pertains to possible

inadequacies in the current provisions of the Trade Expansion Act (TEA) that apply to trade adjustment assistance. In my view this question gets at the heart of problems that have been encountered with this program. As you point out, the entire program is under review both on an interagency and intra-departmental basis. Before this review is complete I hesitate to make piecemeal recommendations on possible changes in the statute. However, it is my personal feeling that there are some major deficiencies in the law. For example:

(a) Injury criteria are too stringent, especially the criterion limiting the availability of assistance to those cases in which injury has already occurred and in which the injury is a result "in major part" of prior trade concessions.

(b) The TEA does not provide for methods of response to import problems that would constitute a genuine adjustment assistance program for *an industry as a whole apart* from escape-clause relief.

In addition, as I pointed out in my report "The United States in a Changing World Economy," the adjustment process takes time even when accelerated by a good program of assistance. Recently some economic changes associated with increased imports have occurred very fast. When increasing imports have the potential to bring change faster than the adjustment system can cope with it—and thus to bring hardship—some have suggested that temporary orderly marketing mechanisms should be available. I believe we should explore the possibility of developing criteria for invoking such mechanisms, and see how these criteria can be internationalized so that such *temporary* protection could be available in all countries on an equitable basis.

You also asked whether the TEA provision requiring a Commerce certification of eligibility after the Tariff Commission or the President has already made such a determination is "an anachronism that serves no useful purpose." There are two situations in the certification process that relate to your question.

First, there is no finding of injury or threat of injury to any particular *firm* in cases where the Tariff Commission finds injury with respect to an *industry* and the President authorizes firms within the industry to request certification of eligibility to apply for adjustment assistance. Accordingly, the Department of Commerce must make a thorough investigation of the facts pertinent to each applicant firm, before determining whether the firm is eligible to apply for adjustment assistance.

A second situation is one in which the certification of eligibility to apply follows a Tariff Commission determination of injury upon petition of a particular firm. It can be argued with some justification in this situation that the Department's certification of eligibility to apply is largely *pro forma.* We have recognized this. On February 18, we published in the Federal Register proposed new regulations for the adjustment assistance program, a copy of which is enclosed. Section 500.23 of these proposed regulations is specifically designed to facilitate prompt certification of eligibility for individual firms that have already been the subject of an affirmative injury finding by the Tariff Commission. You will note that the extent of our review in such cases is limited to obtaining adequate assurance that no material facts were omitted from the firm's presentation before the Tariff Commission and that there has been no significant change in economic circumstances affecting the firm since that time. Of course, the statutory requirement of the TEA must be satisfied before we are justified in spending government monies on adjustment assistance.

Again, my personal view is that a strong case can be made for changing the concept and approach to adjustment assistance from one of adjudication to one of program management by an Executive Department. Under the program management approach, the particular agency involved would administer adjustment assistance from beginning to end. This would permit us to get a much faster jump on the problems.

Your second question relates to the time taken to process cases. As I pointed out, the time lapse between application by a firm for eligibility to apply for adjustment assistance and the certification of such eligibility depends on whether the case stems from an injury determination with respect to the particular firms or with respect to the whole industry. In an individual firm case, an application to this Department for certification of eligibility to apply will be processed promptly, generally within 20 days. We have had one case, however, where certification was delayed until allegations of impropriety with respect to the Tariff Commission proceedings could be reviewed by the Department of Justice.

In cases where the Tariff Commission has made an injury finding as to the whole industry, the time involved is much longer. In these cases, apart from the fact that recourse to adjustment assistance is contingent upon an intervening decision by the President that such form of relief shall be available, the findings of the Commission with respect to the industry are not necessarily illustrative of the situation with respect to a particular firm. We must, therefore, determine whether the firm has been injured by the imports which the Tariff Commission found were injuring the industry. The length of time required for such an investigation depends on many factors, including the size of the firm, the diversity of its product line, the adequacy of its record keeping and the adequacy of the data submitted by the firm to the Department. One such investigation took as long as ten months, while another was completed within two months. Most cases more closely approximate the latter than the former in the amount of time spent on the investigation. As you know, although the trade adjustment assistance program was established in 1962, our experience with processing adjustment assistance cases only began in 1970, following the first affirmative finding by the Tariff Commission. We are now at the point where each case no longer involves entirely new policy considerations and I expect the time lapse between receipt of an application for certification of eligibility to apply and the granting of assistance to be even further reduced as we gain more experience.

With respect to your request for information on the total number of firms certified as eligible to apply for adjustment assistance, 20 firms have applied to date for certification of eligibility. Of these 20 firms, 18 have been certified eligible; one has been denied certification and one application is currently pending.

As to the data requested concerning recipients of adjustment assistance to date, please see the attached table. The time period between certification of eligibility to apply and certification of the firm's adjustment assistance proposal is set forth on this table as well.

You have requested information on the nature, scale and level of adjustment assistance over the past five fiscal years. For the reason explained above, no adjustment assistance was provided until Fiscal Year 1971, when two proposals were certified and financial assistance provided through the Small Business Administration. In Fiscal Year 1972, to date, we have committed $4,672,000 in financial assistance from our own appropriation. With respect to technical assistance, we committed $195,611 in Fiscal Year 1971 and $138,000 so far in Fiscal Year 1972. Total tax assistance certified to date (all in Fiscal Year 1972) amounted to $390,000.

Finally, you asked about the study undertaken by an interagency task force on adjustment assistance. As you know, this task force was established by the Council on International Economic Policy to develop recommendations for a more comprehensive and effective adjustment assistance program. It is still in draft form and has not yet been submitted to the Council. Accordingly, I cannot specifically respond to your inquiry as to the content and timing of possible legislative recommendations until the Council has had an opportunity to consider the findings and conclusions of the task force. The decision whether to make this report available to the Congress will presumably be made by the Council after it has completed its review.

I hope I have answered your questions. In closing, let me say that I believe there is much we can do to broaden both the concept and delivery of trade adjustment assistance. For example, we are now moving ahead in the Commerce Department to give close and expedited attention to the following possibilities:

(a) An early action mechanism designed to spot potential import-impact problems and to help industries and firms take prompt and responsive steps before a critical point of economic detriment is reached.

(b) Techniques and forms of assistance that could be made available on an industry-wide basis (e.g., funding for R&D projects of general application to the industry). This approach, in my view, would provide a broader-gauged response to adjustment assistance problems than that of dealing primarily with individual firm cases, as has been the approach to date under the TEA.

(c) Some form of adjustment assistance to communities economically dependent upon firms that are heavily impacted by import competition.

I appreciate your interest in the trade adjustment assistance program and intend to give it considerable attention in the coming months. Should you or your staff have further questions or useful information about adjustment assistance, please get in touch with me. I hope to continue to strengthen the program, and look forward to working with you toward that end.

Sincerely,

MAURICE H. STANS,
Secretary of Commerce.

Enclosures.

Company and industry	Amount of assistance	Certification of eligibility	Proposal submitted	Proposal certified	Assistance provided
Emil J. Paidar Co., Chicago, Ill.: Barber chairs	$2,500,000	July 20, 1971	July 29, 1970	Aug. 20, 1970	Sept. 20, 1970
Benson Shoe Co., Lynn, Mass.: Nonrubber footwear	1,700,000	July 21, 1970	Oct. 7, 1970	Nov. 19, 1970	Jan. 7, 1971
Louis Shoe Co., Amesbury, Mass.: Nonrubber footwear	747,000	May 4, 1971	Sept. 8, 1971	Oct. 19, 1971	[1] Jan. 20, 1972
ASG Industries, Kingsport, Tenn.: Sheet glass	4,000,000	Sept. 22, 1970	June 4, 1971	Dec. 7, 1971	
The Arista Co., Winston-Salem, N.C.: Textiles/data processing	160,000	Dec. 28, 1971	Feb. 2, 1971	Jan. 11, 1972	
H. H. Scott, Inc., Maynard, Mass.: Consumer electronics	230,000	Mar. 18, 1971	Sept. 21, 1971	Dec. 23, 1971	
Estey Piano Corp., Union, N.J.: Piano	[2] 100,000	June 5, 1970	February 1971	Mar. 4, 1971	
Bel-Tronics Corp., Addison, Ill.: Electronic components	712,000	June 17, 1971	Oct. 25, 1971	Mar. 3, 1972	

[1] 2d disbursement.

[2] Approximate amount of technical assistance provided to date. Final amount of other assistance not yet determined.

UNITED STATES SENATE,
Washington, D.C. February 22, 1972.

Hon. JAMES HODGSON,
The Secretary of Labor,
Washington, D.C.

DEAR MR. SECRETARY: I am sorry that the press of floor business did not allow me to hear all of your testimony before the Joint Economic Committee on February 17. As you know, I asked for and received unanimous consent of the Committee to insert questions and answers into the record. I would appreciate your response to the following questions.

As you know, the Congress and the country have been very much disappointed by the programs of adjustment assistance carried out by this Administration and previous administrations. I have the following questions in this regard:

1) Are there any inadequacies in existing law which deter an effective program of adjustment assistance? For example, is the law that requires the Secretary of Commerce and the Secretary of Labor to certify eligibility to apply for adjustment assistance after there already has been a Tariff Commission and/or Presidential determination of injury an anachronism which serves no useful purpose? Are there other examples of inadequacies of law which should be corrected?

2) What is the time lapse between the application of firms or workers for eligibility to apply for adjustment assistance and the granting of such eligibility? For example, a constituent firm has indicated to me that after a 3–1 Tariff Commission vote in their favor, it took two months merely to receive certification that they were eligible to apply. How many cases are like this where bureaucratic delays prevent a meaningful and prompt program of adjustment assistance?

3) Of the firms and workers which have applied for certification of eligibility, how many have received such certification?

4) Of those receiving certification of eligibility to apply, how many received adjustment assistance? And of those receiving adjustment assistance, what was the time period between their application for eligibility and the granting of adjustment assistance?

5) Could you also inform the Committee of the nature, scale and level of adjustment assistance over the past five fiscal years on an FY year by FY year basis?

Finally, it is my understanding that an Inter-Departmental Task Force under the leadership of Undersecretary Silverman has just completed a major study of adjustment assistance. My question is whether this study with the option it puts forward will be made available to the Congress? Also whether and when the Administration will come forward with legislative recommendations based on this study?

With best wishes,
Sincerely,

JACOB K. JAVITS.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON PLANNED ACTIONS IN THE NASA FISCAL YEAR 1972 PROGRAM

A letter from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, a report on planned actions in the NASA fiscal year 1972 program (with an accompanying report); to the Committee on Aeronautical and Space Sciences.

REPORT ON REVIEW OF ADEQUACY OF PAY AND ALLOWANCES FOR MEMBERS OF THE UNIFORMED SERVICES

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, a report on review of adequacy of pay and allowances for members of the uniformed services (with an accompanying report); to the Committee on Armed Services.

PROPOSED TRANSFER OF SUBMARINE

A letter from the Assistant Secretary of the Navy (Installations and Logistics), reporting, pursuant to law, on the proposed transfer of the submarine USS *Torsk* (AGSS–423 to the Maryland Naval Militia; to the Committee on Armed Services.

REPORT ON RESERVE FORCES

A letter from the Secretary of Defense, transmitting, pursuant to law, a report on Reserve Forces, for the fiscal year 1971 (with an accompanying report); to the Committee on Armed Services.

PROPOSED ASSIGNMENT OF CERTAIN MEMBERS OF THE ARMED FORCES

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend title 10, United States Code, and the Military Selective Service Act, to permit the oversea assignment of members of the Armed Forces who have completed basic training and who have been awarded a military specialty (with accompanying papers); to the Committee on Armed Services.

PROPOSED LEGISLATION RELATING TO NUMBER OF LIMITED DUTY OFFICERS

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to permit the Secretary of the Navy to establish annually the total number of limited duty officers permitted on the active list of the Navy and Marine Corps, and for other purposes (with an accompanying paper); to the Committee on Armed Services.

REPORT ON DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Assistant Secretary of Defense (Installation and Logistics), transmitting, pursuant to law, a report of Department of Defense Procurement from Small and Other Business Firms, for July–December 1971 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

PROPOSED AMENDMENT OF NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF 1966

A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations, and for other purposes (with accompanying papers); to the Committee on Commerce.

REPORT OF SOCIAL SECURITY ADMINISTRATION

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report of the Social Security Administration, for the fiscal year 1971 (with an accompanying report); to the Committee on Finance.

REPORT OF U.S. TARIFF COMMISSION

A letter from the Chairman, U.S. Tariff Commission, transmitting, pursuant to law, a report of that Commission, for the fiscal year ended June 30, 1971 (with an accompanying report); to the Committee on Finance.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Collection of Child Support Under the Program of Aid to Families With Dependent Children," Social and Rehabilitation Service, Department of Health, Education, and Welfare, dated March 13, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a secret report entitled "Follow-Up Review of Civilian Health and War-Related Casualty Program in Laos (B–133001, dated March 13, 1972) (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Most Veterans Not Completing Correspondence Courses—More Guidance Needed From the Veterans' Administration," Veterans' Administration, dated March 22, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Water Pollution Abatement Program: Assessment of Federal and State Enforcement Efforts," Environmental Protection Agency, dated March 23, 1972 (with an accompanying report); to the Committee on Government Operations.

PROPOSED AMENDMENT TO CONCESSION CONTRACT IN CERTAIN AREAS

A letter from the Acting Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed amendment to the concession contract in Zion, Bryce Canyon, and Grand Canyon (North Rim) National Parks, and Cedar Breaks National Monument (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT OF NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE

A letter from the Chairman, National Commission on Marihuana and Drug Abuse, transmitting, pursuant to law, a report entitled "Marihuana: A Signal of Misunderstanding" (with an accompanying report); to the Committee on the Judiciary.

REPORT ON FEDERAL SUPPORT TO UNIVERSITIES, COLLEGES, AND SELECTED NONPROFIT INSTITUTIONS

A letter from the Director, National Science Foundation, transmitting, pursuant to law, a report on Federal support to universities, colleges, and selected nonprofit institutions, for the fiscal year 1970 (with accompanying report); to the Committee on Labor and Public Welfare.

PROPOSED DISASTER RELIEF ACT AMENDMENTS OF 1972

A letter from the Director, Office of Emergency Preparedness, Executive Office of the President, transmitting a draft of proposed legislation to amend the Disaster Relief Act of 1970 (with accompanying papers); to the Committee on Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MANSFIELD (for Mr. BURDICK), from the Committee on Interior and Insular Affairs, without amendment:

S. 3284. A bill to increase the authorization for appropriation for completing work in the Missouri River Basin by the Secretary of the Interior (Rept. No. 92–726).

By Mr. MANSFIELD (for Mr. ANDERSON), from the Committee on Interior and Insular Affairs, without amendment:

H.R. 12749. An act to authorize appropriations for the saline water conversion program for fiscal year 1973 (Rept. No. 92–727).

EXECUTIVE REPORTS OF COMMITTEES

Mr. SYMINGTON. Mr. President, as in executive session, from the Committee on Armed Services I favorably report the nominations of five flag and general officers in the Navy, Air Force, and Marine Corps, and one lieutenant colonel in the Marine Corps and ask that these names be placed on the Executive Calendar.

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

The nominations, ordered placed on the Executive Calendar, are as follows:

Gen. Bruce K. Holloway (major general, Regular Air Force), U.S. Air Force, to be placed on the retired list, in the grade of general;

Rear Adm. Merlin H. Staring, Judge Advocate General's Corps, U.S. Navy, to be Judge Advocate General of the Navy, with the rank of rear admiral;

Maj. Gen. George C. Axtell, U.S. Marine Corps, for commands and other duties determined by the President, for appointment to the grade of lieutenant general while so serving;

Maj. Dale L. Harpham, U.S. Marine Corps, for appointment to the grade of lieutenant colonel;

Vice Adm. Noel A. M. Gayler, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of admiral while so serving; and

Lt. Gen. John W. Vogt, Jr. (major general, Regular Air Force) U.S. Air Force, to be assigned to a position of importance and responsibility requiring the rank of general.

Mr. SYMINGTON. Mr. President, in addition I favorably report 3,249 nominations in the Army, Navy, and Air Force.

Since these names have already appeared in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

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

Joseph F. Short, and sundry other persons, for appointment in the Regular Army of the United States;

Chester A. Hanson, and sundry other officers, for promotion in the regular Army of the United States;

James M. Jackson, and sundry other officers, for promotion in the Reserve of the Army of the United States;

Robert R. Groom (civilian college graduate), for assignment in the U.S. Navy;

William T. Bell, and sundry other Naval Reserve officers, for assignment in the U.S. Navy; and

Ronald B. Appel, Jr., and sundry other Air National Guard officers, for promotion in the Reserve of the Air Force.

EXTENSION OF TIME FOR FILING A REPORT

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Georgia (Mr. TALMADGE), I ask unanimous consent that the Committee on Agriculture and Forestry be granted an extension of time until April 15 to file a report required by section 3 of Senate Resolution 76.

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

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. RIBICOFF (for himself, Mr. KENNEDY, Mr. MAGNUSON, Mr. NELSON, Mr. HUMPHREY, Mr. MONDALE, Mr. CHILES, Mr. STEVENSON, Mr. CRANSTON, Mr. HARTKE, Mr. PELL, Mr. McGOVERN, Mr. PASTORE, Mr. BAYH, Mr. WILLIAMS, Mr. MUSKIE, Mr. McGEE, Mr. TUNNEY, Mr. HART, Mr. TALMADGE, Mr. JACKSON, Mr. McINTYRE, Mr. EAGLETON, and Mr. HARRIS):

S. 3432. A bill to establish a Department of Health. Referred, by unanimous consent, simultaneously to the Committee on Government Operations and the Committee on Labor and Public Welfare; and, when reported by one committee, to be referred to the other.

By Mr. JAVITS:

S. 3433. A bill to amend the Interstate Commerce Act, as amended, with respect to school bus safety. Referred to the Committee on Commerce.

By Mr. BEALL (for himself and Mr. MATHIAS):

S. 3434. A bill to provide for the temporary duty-free importation of logwood extract. Referred to the Committee on Finance.

By Mr. GAMBRELL:

S. 3435. A bill to impose a moratorium on involuntary student transportation until a uniform plan of racial desegregation shall have been implemented throughout the country. Referred to the Committee on the Judiciary.

By Mr. MOSS (for himself, Mr. ALLOTT, Mr. DOMINICK, and Mr. FANNIN):

S. 3436. A bill to amend the Soil Conservation and Domestic Allotment Act, as amended, to provide for a four corners area program. Referred to the Committee on Agriculture and Forestry.

By Mr. PEARSON:

S. 3437. A bill to authorize the Secretary of Housing and Urban Development to provide assistance to State and local governments to encourage the repair and improvement of substandard housing. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. STEVENS:

S. 3438. A bill to amend section 607(k)(8) of the Merchant Marine Act, 1936, as amended. Referred to the Committee on Commerce.

By Mr. STEVENSON:

S. 3439. A bill to authorize expenditures to correct or compensate for substantial defects in section 203(b) FHA mortgaged homes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BUCKLEY (for himself, Mr. BOGGS, and Mr. JAVITS):

S. 3440. A bill to terminate the obligation of States to return funds deposited with them pursuant to the U.S. Deposit Fund Act of 1836. Referred to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. CRANSTON, Mr. HUGHES, Mr. JAVITS, Mr. MONDALE, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENSON, Mr. WILLIAMS, Mr. EAGLETON, and Mr. PELL):

S. 3441. A bill to extend the traineeship program for professional public health personnel, and project grants for graduate training in public health under the Public Health Service Act. Referred to the Committee on Labor and Public Welfare.

By Mr. KENNEDY (for himself, Mr. CRANSTON, Mr. HUGHES, Mr. JAVITS, Mr. MONDALE, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENSON, Mr. WILLIAMS, Mr. EAGLETON, and Mr. PELL):

S. 3442. A bill to amend the Public Health Service Act to extend the authorization for grants for communicable disease control and vaccination assistance and for other purposes. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RIBICOFF (for himself, Mr. KENNEDY, Mr. MAGNUSON, Mr. NELSON, Mr. HUMPHREY, Mr. MONDALE, Mr. CHILES, Mr. STEVENSON, Mr. CRANSTON, Mr. HARTKE, Mr. PELL, Mr. McGOVERN, Mr. PASTORE, Mr. BAYH, Mr. WILLIAMS, Mr. MUSKIE, Mr. McGEE, Mr. TUNNEY, Mr. HART, Mr. TALMADGE, Mr. JACKSON, Mr. McINTYRE, Mr. EAGLETON, and Mr. HARRIS):

S. 3432. A bill to establish a Department of Health. Referred, by unanimous consent, simultaneously to the Committee on Government Operations and the Committee on Labor and Public Welfare; and, when reported by one committee, to be referred to the other.

ESTABLISHMENT OF A DEPARTMENT OF HEALTH

Mr. RIBICOFF. Mr. President, today I am introducing, with Senator KENNEDY and 22 other Senators, legislation to create a separate cabinet-level Department of Health and establish coordinated long-term planning of Federal health policy. The new department would assume all the health responsibilities of the present Department of Health, Education, and Welfare as well as other health programs now scattered among 23 Federal departments and agencies.

Since its establishment by President Eisenhower in 1953, the Department of Health, Education, and Welfare has grown into a bureaucracy of 108,000 employees with an overall budget of nearly $79 billion, one-third of the entire Federal budget. Over 250 categorical grant programs are operated by the Department including 40 separate Federal health-grant programs. HEW will spend over $18 billion in fiscal 1973 on medical and health-related activities.

There is no indication that HEW's growth is slowing. The Department's budget is rising at an annual rate of 14 percent—nearly twice the average rate of increase in the total Federal budget.

HEW, as presently structured, is unwieldy, unmanageable and therefore unresponsive to both the executive and the legislative branches. No Secretary can know what is going on in such a huge department, much less maintain control of the operation and policymaking apparatus of such a bureaucracy.

As a former Secretary of Health, Education, and Welfare, I am convinced that health policy can be more rationally developed and the health programs of our Nation better handled if they are placed under the jurisdiction of one agency of manageable size, a Department of Health. At present a sizable portion of the $25 billion we are spend-

ing througout the Federal Government for medical and health-related activities is being lost through inefficiency, lack of coordination and overlapping of programs.

As a result of the scattering of programs and the lack of a centralized health-policy mechanism, the only plan in the Federal Government where health priorities can be set is in the Office of Management and Budget when the budget is being developed. Major policy decisions affecting the Federal Government's health policy should be made by experts in the health field, not by OMB employees who cannot be expected to formulate national health priorities, much less understand the intricacies and interrelationships of the myriad health programs now in existence.

The problem is going to get worse before it gets better. It is only a matter of time before we enact a program of national health insurance which will expand the Federal role in health substantially, no matter what bill is passed. We must reshape our existing institutions if this new program is to be administered properly.

The lack of coordination of medical programs at the Federal level has concerned me for some time. In 1968 my Government Operations Subcommittee on Executive Reorganization held hearings on the Federal role in health.

The subcommittee found that Federal health programs are run by a cumbersome, disjointed bureaucracy with agencies, whose priorities are not related to health, making decisions that affect the health of the population. Interagency coordination was found to be a hit-and-miss proposition. Most agencies have little understanding of similar programs in other agencies or act as if they are unaware that such programs exist.

One of the most basic findings of the subcommittee was that there is no national health policy to guide Federal health programs and expenditures. No central body or group exists within the executive branch that is responsible for developing Federal health policy and evaluating Federal performance in light of that policy.

HEW's response to my 1968 letter of inquiry regarding implementation and formulation of national health policy supported the subcommittee's findings by noting:

> Up to and including the present (1968) there has never been a formulation of national health policy, as such. In addition, no specific mechanism has been set up to carry out this function. As a consequence, the national health policy is a more or less amorphous set of health goals, which are derived by various means and groups within the Federal structure.

The situation has changed little since that time.

President Nixon has recognized the need to reorganize the Department of Health, Education, and Welfare as part of a major restructuring of the executive branch. His proposals deserve our careful examination since such far-reaching and long-term recommendations do not come before us very often.

Under the President's proposals, however, HEW would expand into an even larger agency, the Department of Human Resources. This Department would add many programs from the Departments of Labor, Agriculture, Housing, and Urban Development, and OEO to the already over extended Department of Health, Education, and Welfare.

I believe we should examine alternatives to the President's reorganization proposal. In that spirit, I introduced legislation in April 1971, to create a separate Department of Education. Today, in the same spirit, I am introducing a bill to create a Department of Health.

This bill is not complicated. First, it establishes a separate Department of Health to serve as a focal point within the Federal Government for defining health policy and administering Federal health programs.

The new Cabinet-level department would be administered by a Secretary of Health appointed by the President, with the advice and consent of the Senate.

The Secretary would be responsible for all health programs now administered by the Secretary of Health, Education, and Welfare, including medicare and medicaid, and any new program of national health insurance.

In addition the President would be empowered to transfer additional functions to the new Department within 180 days if the Director of the Office of Management and Budget determines that the function relates to health matters.

This legislation would also establish a 19-member National Advisory Commission on Health Planning, composed of persons qualified to assess the health programs of the United States including practicing physicians, scientists, medical experts and consumers. Nine members would be appointed by the President, five members by the President pro tempore of the Senate and five members by the Speaker of the House.

The Commission would be directed to conduct a study of the various programs and activities of the Department of Health and submit a study to the President and Congress within a year with recommendations for an effective structure for the Department.

More significantly the Commission would conduct a yearlong study of the various health-related programs of each agency of the Federal Government outside HEW and would submit an evaluation of these programs and recommendations regarding which programs should be transferred to the new Department.

In addition to these studies, the Commission would conduct a 2-year study and submit to Congress and the President a detailed national health plan for meeting current and future health needs for the United States for the next 10 years.

This national health goals plan would be the first attempt made by the Federal Government to coordinate and plan in order to meet the health care needs of the Nation. It is an indispensable first step toward enactment of a major national health insurance plan.

The national health goals plan would set forth national goals and priorities for making comprehensive health care and treatment available at reasonable cost to every person in the United States. The plan would provide for the effective coordination and application of all health-related activities at the regional, State, and local levels and provide for encouraging cooperative efforts among governmental and nongovernmental agencies concerned with health services, facilities, and manpower.

An appropriation of $5 million would be authorized for the Commission to carry out its functions.

The uncertain status of health in the Federal Government must be ended. Responsibilities should be focused in one department and health policy must be developed and coordinated by those who are knowledgeable in the health field. This legislation will move us toward that goal.

I ask unanimous consent that the bill be simultaneously referred to the Committee on Government Operations and the Committee on Labor and Public Welfare and that when it is reported by one committee it be referred to the other.

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

Mr. KENNEDY. Mr. President, I am delighted today to be joining with my colleague from Connecticut, Senator ABE RIBICOFF, the chairman of the Executive Reorganization Subcommittee of the Committee on Government Operations, in introducing what we believe to be extremely significant legislation. This bill which creates a Department of Health as a Cabinet level Department of the Government is long overdue. The simple fact of the matter is that the Department of Health, Education, and Welfare, which has grown so big and has had so many burdens placed upon it that it cannot operate effectively. HEW now has more than 100,000 employees, and of those, almost 60,000 are in one way or another involved in health programs. And of the enormous budget for the Department, which this year for the first time will exceed the budget of the Department of Defense, almost $20 billion is devoted to health programs.

Regrettably, these people and those programs are scattered widely throughout the Department making it impossible for there to be any coherent health planning and programing in respect to the Federal Government's efforts to improve the health of the American people. For example, the Social Security Administration located in Baltimore, Md., is principally responsible for the medicare program. Its companion, though, the medicaid program, is administered by the social and rehabilitation service in Washington, D.C., an aspect of the welfare program. In addition, the programs which are principally intended to improve the organization and delivery of health care are administered by the Health Services and Mental Health Administration, located in Rockville, Md. It is clear to me that this sort of functional and geographic diffusion is a major obstacle to effective planning and programing for health. All of us would agree, I think, that it is essential that the programs of the Federal Government which finance health care, such as medicare and medicaid, be closely related to

the programs which are intended to improve the health care infrastructure. Unfortunately, the organizational stress within the existing Department of Health, Education, and Welfare makes this sort of effective coordination extremely difficult if not impossible. And in the face of this difficult situation it is important to note that tinkering will not work.

There have been many recent reorganizations and reshufflings of the health functions of HEW with little or no discernible improvement in planning and coordination. The health functions of the Department were reorganized in 1967, reshuffled again in 1968, and have been again rearranged in 1971.

Perhaps the principal effect of these reorganizations has been to lower both morale and efficiency of those who are attempting to do their best under very difficult circumstances.

The fact of the matter is, Mr. President, that this country is on the threshold of striking down the barriers which prevent millions of Americans from receiving the kind of health care they deserve. And when those barriers are struck down, inevitably the Federal Government will have a substantially larger role to play in assuring high quality health care to all Americans.

It is prudent, therefore, that there be created in the Federal Government an effective management structure which will be able to carry out this very important enhanced role. I believe the Department of Health will measure up to that task.

Mr. President, health will soon become the second largest industry in the Nation. As we know too well, health-care costs are soaring at a rate which is twice that of the Consumer Index. And the American people now expend almost $75 billion a year for health, of which 40 percent is expended on their behalf by the Federal Government. Health-care costs in this country have increased sixfold in the last two decades.

In addition to the skyrocketing costs of health care there are serious problems in the quality of care which is rendered. There is not enough health manpower for the Nation.

And the manpower that we do have is unevenly and inequitably distributed. And there is no overall coherent health plan for the Nation. Instead, HEW has been forced to respond to crises rather than to take the initiative in meeting the health-care needs of the American people. What was a rational grouping of domestic functions for the Nation in 1953 is not a rational grouping of functions as this Nation approaches its 200th anniversary.

It is not in the interest of this Nation to have one single member of the President's Cabinet charged with the responsibilities of playing off enormous welfare needs against mounting concern in respect to the need for high-quality education, against the storm or protest which is building in respect to the unmet health needs of the American people. Under those circumstances, Mr. President, no single individual, regardless of his competence, can afford to play the kind of leadership role which is necessary in each of these vital domestic areas.

America needs a member of the President's Cabinet who can and will speak for health and for health alone.

By Mr. JAVITS:

S. 3433. A bill to amend the Interstate Commerce Act, as amended, with respect to schoolbus safety. Referred to the Committee on Commerce.

SCHOOL BUS SAFETY ACT OF 1972

Mr. JAVITS. Mr. President, I introduce for appropriate reference the School Bus Safety Act of 1972. The bill is being cosponsored in the House by Representative JOHN W. WYDLER of New York.

This measure amends the Interstate Commerce Act to strengthen the enforcement powers of the Bureau of Motor Carrier Safety by enabling the Bureau to exercise regulatory jurisdiction over certain schoolbus operations which are now exempt because they are conducted by private carriers or conducted by agencies and instrumentalities of government, such as local educational agencies. While the bill is directed at so-called "interstate operations," the Department of Transportation indicated that in cases where some buses in a school system are utilized for interstate transportation—such as study trips or trips to athletic events or historical sites—then all the schoolbuses of the school district would come under the the reach of the law.

The bill is the product of study I first undertook some time ago with local and State school officials, professionals in the field of safety and pupil transportation, and officials and professional staff of the Department of Transportation. It follows recommendations made by the National Transportation Safety Board in its report on the 1970 fatal bus crash involving a tour group from the Hillel Country Day School at Lawrence, Long Island, N.Y.

The tragic schoolbus accident last week in Congers, N.Y., in which four students were killed and more than 40 injured, dramatizes the increasing public concern for the safety of the almost 20 million young people who each day travel in some 285,000 buses to and from school. The National Transportation Safety Board has informed me that it will be undertaking a major investigation of the Congers accident, probing all aspects of this incident, in order to determine probable cause, and will then make recommendations based on its findings to appropriate local, State, and Federal authorities and to the industry. But the Board's jurisdiction goes no further than making recommendations—and its probe may take as long as a year. This bill is meant to correct some of these deficiencies in the law.

Specifically, the bill would:

Authorize the Secretary of Transportation to establish reasonable requirements to promote safety of operation of schoolbuses including qualifications of drivers, maximum hours of service, and standards of equipment. In administering and enforcing regulations to promote schoolbus safety, the Secretary would be authorized to use the administrative powers that he now exercises in the administration of the Department of Transportation's motor safety program, such as record inspection, issuance of administrative subpenas, and inspection of motor vehicles.

Give the Secretary enforcement powers.

Give the Secretary power to issue a cease-and-desist order directing the carrier to immediately stop his schoolbus operations for up to 60 days in a case where a motor carrier's school bus operations create an unreasonable risk of accident, injury, death, or property damage, and when he finds that application of other available sanctions would be impracticable, unduly time consuming or inadequate to protect the public health and safety.

For 1970, the most recent data available indicate that there were 42,000 schoolbus accidents, killing 140 persons and injuring 5,400. This involves 2.2 billion miles of travel during that year. While this record for safety is considered superior to the safety record in other areas, the fact remains that it is still much too high. The safety and well-being of children merit every action that can be undertaken. The bitter lessons learned from the tragic deaths and injuries in the accidents involving the children from Congers, in Rockland County, last week and the children from the Lawrence, Long Island, Hillel Country Day School 2 years ago must be used to avert such tragedies in the future.

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

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

S. 3433

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

SEC. 2. Part II of the Interstate Commerce Act, as amended (49 U.S.C. 301 *et seq.*), is amended by adding a new section 204b, reading as follows:

"SEC. 204b. It shall be the duty of the Secretary of Transportation, in carrying out the functions, powers, and duties transferred by section 6(e) of the Department of Transportation Act (80 Stat. 931, 939–940), to establish reasonable requirements to promote safety of operation of motor vehicles used to transport children to or from school or school-related activities and to that end to prescribe qualifications of drivers and maximum hours of service and standards of equipment for motor carriers (including private carriers and agencies or instrumentalities of Federal, State, and local governments) engaged in transporting children to or from school or school-related activities. In the event such requirements are established, the term "motor carrier" includes all persons (including private carriers and agencies or instrumentalities of Federal, State, or local governments) engaged in transporting children to or from school or school-related activities. In the administration and enforcement of this section, the Secretary is au-

thorized to employ all administrative powers transferred to him by section 6(f) of the Department of Transportation Act (80 Stat. 931, 940)."

SEC. 3. Section 222 of Part II of the Interstate Commerce Act, as amended (49 U.S.C. 322), is amended as follows:

(1) by redesignating subsection (a) as paragraph (1) of such subsection and adding a new paragraph (2), reading as follows:

"(2) Any person who knowingly commits an act in violation of any requirement, rule, regulation, or order promulgated by the Secretary of Transportation under section 204b of this part shall be fined not less than $250 nor more than $1,000 for the first offense and not less than $500 nor more than $2,000 for any subsequent offense. Each day of violation shall constitute a separate offense.";

(2) by redesignating subsection (h) as paragraph (1) of such subsection and adding a new paragraph (2), reading as follows:

"(2) Any motor carrier, or other person who violates any requirement, rule, regulation, or order of the Secretary of Transportation described in subsection 222(h)(1) or promulgated under section 204b of this part shall be subject to the penalties specified in subsection 222(h)(1)."; and

(3) by adding a new subsection (i), reading as follows:

"(i) In the administration of section 204b of this part, the Secretary of Transportation may order any motor carrier to cease and desist from engaging in all or a specified portion of its operation of motor vehicles used to transport children to or from school or school-related activities for not more than sixty days when the Secretary, for good cause, finds that the carrier's operations will create an unreasonable risk of accident, injury, or death to persons or damage to property. Before issuing a cease and desist order authorized by this subsection, the Secretary shall (1) determine that the application of other available sanctions would be impracticable, unduly time-consuming, or inadequate to protect the public health and safety; and (2) give the carrier written notice of his intention to issue a cease-and-desist order, identifying the portion of the carrier's operations that would be affected by the order and setting forth reasons why he intends to issue it. If the carrier is operating under a certificate or permit issued by the Commission with respect to operations covered by a cease-and-desist order, the Commission may, upon petition of the Secretary and after notice and hearing, revoke or further suspend the carrier's operating authority in whole or in part upon determining that revocation or further suspension will protect the public safety. An order of the Secretary issued under this subsection is reviewable in accordance with chapter 7 of title 5, United States Code. The provisions of title 28, United States Code, respecting three-judge district courts, do not apply to a proceeding to review an order of the Secretary issued under this subsection."

By Mr. GAMBRELL:

S. 3435. A bill to impose a moratorium on involuntary student transportation until a uniform plan of racial desegregation shall have been implemented throughout the country. Referred to the Committee on the Judiciary.

Mr. GAMBRELL. Mr. President, I am introducing a bill today which I hope will serve as a substitute for the busing moratorium which President Nixon proposed last week. I described this bill earlier today in testimony before the Education Subcommittee of the Committee on Labor and Public Welfare, and I ask unanimous consent that my opening statement with its exhibits to the Education Subcommittee, as well as the text of my bill itself, be printed in the RECORD at this point.

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

S. 3435

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Desegregation and Student Transportation Moratorium Act of 1972".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that:

(1) The provision of equal educational opportunity to all students of a local educational agency requires racial desegregation.

(2) School desegregation should be required equally and uniformly in every section of the United States.

(3) For the purpose of desegregation, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students.

(4) In many cases these reorganizations, with attendant increases in student transportation, have caused substantial hardship to the children thereby affected, have impinged on the educational process in which they are involved, and have required increases in student transportation often in excess of that necessary to accomplish desegregation.

(5) At the same time that extensive transportation of school children and other extreme and disruptive remedies are being required in some local educational agencies for the purpose of desegregation, many local educational agencies throughout the country have not undertaken any effective efforts to desegregate.

(6) This inequity in the application and enforcement of desegregation remedies obstructs the nationally accepted goal of equal educational opportunities without regard to race, color, or national origin.

(7) The Congress is presently considering legislation to achieve the goal of equal educational opportunity for all citizens.

(8) A moratorium on the involuntary transportation of school children will permit an orderly legislative settlement of the question of providing equal educational opportunity on a uniform basis throughout the country.

(b) It is, therefore, the purpose of this Act to impose a moratorium on the effectiveness of Federal court orders that require local educational agencies to transport students, and on the involuntary implementation of certain desegregation plans under Title VI of the Civil Rights Act of 1964 until racial desegregation is uniformly applied and enforced or until such earlier date as there shall be adopted a uniform plan to provide equal educational opportunities throughout the country.

SEC. 3. (a) Notwithstanding any other law or provision of law, the effectiveness of any order of a court of the United States and the implementation of any desegregation plan submitted by a local educational agency to a department or agency of the United States pursuant to Title VI of the Civil Rights Act of 1964, to the extent such order or such plan requires for any period subsequent to December 31, 1970, directly or indirectly, a local educational agency to transport students in order to overcome racial imbalance or to carry out a plan of racial desegregation, shall be postponed until plans providing for the racial desegregation of schools as provided in subsection (b) of this section, or reports of the absence of racial discrimination as described in subsection (b) of this section, shall have been adopted uniformly throughout the United States by the appropriate local educational agencies thereof.

(b) Plans providing for the racial desegregation of schools shall provide for the elimination of:

(1) any deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools.

(2) the assignment by an educational agency of a student to a school, other than the one closest to his place of residence within the school district in which he resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his place of residence within the school district of such agency providing the appropriate grade level and type of education for such student.

(3) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff.

(4) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency.

(5) language barriers that impede equal participation by the students of a local educational agency in its instructional programs.

(6) the provision of inferior schools among communities in accordance with racial predominance.

(7) any unequal allocation of school facilities and resources among communities within a local educational agency in accordance with racial predominance, except for the purpose of equalizing educational facilities.

(8) prohibitions against volitional student transfers from schools in which a majority of the students are of their race, color, or national origin to schools in which a minority of the students are of their race, color or national origin.

(c)(7) A plan or report shall not be deemed to have been adopted for the purpose of subsection (a) of this section until such plan or report, approved by the appropriate local educational agency after public hearing, has been submitted by an appropriate official of such agency to the Secretary of Health, Education, and Welfare, and the Secretary has not interposed an objection within sixty days after such submission. The Secretary shall interpose an objection to any report which he finds to be inaccurate in any substantial respect and shall object to any plan which he finds to be substantially deficient in the elimination of racial discrimination as described in subsection (b) of this section. *Provided*, that any such plan or report, whether or not submitted to the Secretary, shall be deemed to have been adopted for the purpose of this section if the Federal district court having jurisdiction of such agency shall have approved the substance of such plan or the truth of such report, and has found such plan or report to be in accordance with the Constitution of the United States.

(2) Plans shall not be deemed to have been uniformly adopted throughout the United States for the purpose of subsection (a) of this section until—

(A) such plans have been adopted in school systems containing not less than 75 per centum of the school population in public school systems which have total minority student population greater than 10 per centum, or

(B) such plans are in effect in not less than seventy-five of the one hundred most popu-

lous school systems in the United States (1) which have total minority student population greater than 10 per centum or (2) which had a greater percentage of minority students in 1971 attending schools in which minority students were in the majority than in 1968, and such plans are in effect in 75 per centum of the States of the United States having a minority public school student population greater than 10 per centum.

(d) Nothing in this Act shall prohibit an educational agency from proposing, adopting, requiring, or implementing any desegregation plan, otherwise lawful, that exceeds the limitations specified in subsection (a) of this section, nor shall any court of the United States or department or agency of the Federal Government be prohibited from approving implementation of a plan that exceeds the limitations specified in subsection (a) of this section if the plan is voluntarily proposed by the appropriate educational agency.

(e) A local educational agency shall be deemed to transport a student if it pays any part of the cost of such student's transportation, or otherwise provides such transportation.

STATEMENT BY HON. DAVID H. GAMBRELL BEFORE THE EDUCATION SUBCOMMITTEE OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE

Mr. Chairman and members of the Committee, I wish to express my appreciation for the opportunity of presenting to you today my views on the subjects of school busing and equal educational opportunities, with particular reference to the proposals recently presented to the Congress by President Nixon.

As each of you know, I have a vital interest in the subject as a Senator from Georgia, where virtually every school system is operating under some form of court ordered or approved desegregation plan, where virtually every school system has for several years been under careful scrutiny by the Department of HEW for compliance with departmental desegregation policies, where in many cases federal funding has been delayed or denied for actual and alleged violations of federal guide lines, and where the application of spectacular desegregation remedies has resulted in educational chaos and in a massive readjustment of our educational systems.

Every one of our major cities is under some form of actual or threatened massive forced busing plan but other unique remedies have been experimented with and applied, including adjusted grading, pairing, zoning, consolidation of schools, teacher transfers, promotion and demotion of officials, school name change (along with changes of athletic team names, slogans and pep songs), and the actual closing and abandonment of school buildings. This has led to teacher resignations, withdrawal of students, a rise in private school attendance, loss of support for public education, school boycotts and other problems.

But aside from my capacity as a representative of a state which has had this chaotic adjustment thrust upon its educational system, I can address these matters as a citizen and parent who has personally lived through the trials and traumas of the school desegregation and civil rights struggles, on the ground, in the South, since 1954, face to face. Few members of the Senate can approach the matter from this point of view. And to the best of my knowledge, while the busing issue has been mounting to white heat during the past year, no parent who has had any firsthand experience with forced busing or the impact of school desegregation has been heard from by a Senate Committee.

It is not my purpose today, however, to recount my own experience with this subject during the past eighteen years. I will say that, although faced with enormous problems of readjustment, many developments have taken place in my state which give me pride and renewed faith and confidence in the capacity of Georgia people to accept social change, and to live with the attendant adversity.

For present purposes, it will be sufficient to say that the experiences which I have had and those experienced by thousands of families like mine, are what have precipitated the legislative proposals which bring up together today.

May I begin my comments by saying that I favor equal educational opportunities in community schools free of racial discrimination.

The implementation of this goal should be the subject of our discussion here today. However, against the background of the forced busing crisis, and in the midst of an election year, the atmosphere for the consideration of improved educational opportunities is hardly the best.

Unfortunately, for many months during the rising intensity of this crisis, the leadership in both Houses of Congress made every effort to avoid a free and open discussion of these questions. The issue had to be brought out in the open through floor amendments to the Higher Education Bill.

Without hearings in either the House or Senate, without leadership from the White House, and pursuant to an effort to waffle on the entire subject, amendments to the Higher Education Bill were debated and adopted, and now reside in the Conference Committee on that bill.

Now, the introduction by President Nixon of new anti-busing proposals, accompanied by a plan for equal educational opportunities, reopens the entire question for further consideration.

But regardless of how the question got here, it is important that we try to focus on equal educational opportunities, and the proposal which I am offering today is an effort to create a public and legislative atmosphere in which the question of equal educational opportunities can be considered free of the discord, partisanship and antagonisms surrounding the busing question.

It will come as no surprise to members of this Committee for me to state that I am opposed to forced school busing to achieve integration, as ordered by federal courts and the Department of Health, Education, and Welfare. In this, I am certainly not unique, as in every poll, referendum and election in which the busing issue has been raised, the American people, North and South, black and white, have expressed overwhelming opposition to it. Even those who have not experienced it are opposed to it.

This practice cannot be terminated any too soon to suit me. But in addition to its inherent unwisdom, forced busing as an issue is obstructing and obscuring efforts to achieve the ends of equal educational opportunities for all. Thus the proposal which I am offering today, a nationally uniform moratorium on forced busing, while it goes primarily to the busing question, is intended to make reasonable and deliberate consideration of the equal educational opportunities proposals possible.

In my opinion, it would be unwise to be in a rush toward a permanent solution of the question of equal educational opportunities. Frankly, aside from the busing question, I feel that well meaning but misguided persons will seek to relieve their guilt feelings about school segregation and racial isolation by recommending massive spending programs which will result in massive waste of hard-earned taxpayer dollars on ill-conceived educational schemes.

I certainly do not claim to be an expert on the subject of education myself. In fact, I will not here today offer suggestions to this Committee on methods, techniques, and funding requirements for compensatory and remedial education such as those proposed in President Nixon's Equal Educational Opportunities Bill. These are some of the subjects which I would like to see the Committee approach with extreme care and deliberation.

In particular, I would hope that the Committee in considering the possible use of forced busing as an equal education technique will give weight to overwhelming public opinion against it.

Contrary to what has seemed to be accepted dogma for educational authorities, and for judicial decisions, there is a growing body of opinion which questions whether busing for integration purposes is good for public education.

Among the authorities which have developed recently which question the value of artificially integrated educational systems are the following, which I offer for inclusion in the record:

1. Two Columns by William Raspberry, noted Black columnist, published in the Washington Post on January 26 and February 16, 1972. (Exhibit 1.)

2. An article by Nathan Glazer, "Is Busing Necessary?", along with the accompanying essay by Norman Podhoretz, "School Integration and Liberal Opinion", which appeared in the March, 1972 issue of Commentary magazine. (Exhibit 2.)

3. The decision of the United States District Court for the Northern District of Georgia, Atlanta Division, in the case of Vivian Calhoun vs Ed. S. Cook et al, in which the District Court in Atlanta accepted the recommendation of the Atlanta School Board that forced busing would not aid desegregation of the Atlanta schools, and in fact, would have a negative effect on the whole Atlanta community. (Exhibit 3.)

In addition, I recommend that consideration be given to the recently published report "On Equality of Educational Opportunity", a compilation of papers from the Harvard University Faculty Seminar on "The Coleman Report" edited by Frederick Mosteller and Daniel P. Moynihan.

A deliberate approach to the solution of the equal education problem would also afford the Committee an opportunity to hear from witnesses who have been in the field during the past eighteen years. One of these might be Dr. Benjamin Mays, President of Morehouse College in Atlanta, preacher of the funeral of Dr. Martin Luther King, Jr., who has been President of the Atlanta Board of Education during the past two years. It was this Board, with Dr. Mays as President and two other Blacks as members, which recommended against forced busing for integration purposes in the Atlanta School System. As indicated, the federal court in Atlanta adopted this recommendation.

Further, the Committee might wish to visit in person in places where various desegregation techniques, including forced busing, have been implemented, to hear from parents and teachers, and to witness various programs of emergency and other forms of desegregation relief.

Such an investigation of this entire subject should lead the Committee to a much sounder permanent program of improved and equal educational opportunities. And I think that the Committee will also conclude that forced busing for integration purposes has not, and will not serve the goals which its sponsors apparently think it will serve. In my opinion, forced busing does not serve the goal of racial justice, it does not serve the goal of quality education, it does not serve the goal of strengthening the concepts of family and community that are already buckling and decaying under the pressure of social change. And it does not serve the goal of social mobility for economic and racial minorities.

It serves only the goal of those well intentioned, but unresponsive social planners who

confuse motion with progress, and speed with direction.

Busing has been no more than a temporary "cause" for those who want to do something, even if it is wrong. In the process, the country has again made the South, the Blacks, the poor and the children, the guinea pigs for social experimentation, while the established and the rich keep the social barriers in tact. In other words, it is another instance where hardworking, taxpaying Americans, black and white, in the South and elsewhere, are made to bear the brunt of another innovation of the grand planners in Washington. And when they have protested this abuse, they are labeled racists. Is it any wonder that so many Americans are angry today?

This brings me to the crux of my comments on the subject before us today. I think the basic fault in the school busing and quality education legislation proposed by President Nixon is its failure to guarantee that school desegregation will hereafter be uniformly applied and enforced in all sections and to all persons within the United States.

In my judgment, the lack of uniformity in the present system of court ordered school desegregation is largely responsible for the delays which have been experienced, and for the intense controversy which has resulted from court orders in this field.

The substitute legislation which I proposed in place of President Nixon's plan would require uniform application and enforcement of school desegregation and educational opportunity laws.

The concept of equal protection of the laws has within it not only the consideration of equal justice among all citizens, but also indulges the practical consideration of encouraging public support for laws which are fairly applied and enforced. Laws which have unequal application, or are unequally enforced, become the subject of controversy. Even where there might be acceptance of the principle of such laws, there will be complaints because of the discrimination in application or enforcement.

In the case of forced busing, through court and departmental orders, it is virtually impossible to develop anything but a patchwork system of desegregation enforcement. In the first place, there is no enforcement in areas where the opportunity has not been taken or afforded to institute litigation or administrative proceedings. Even among communities under court enforcement, there can be a wide range of remedies applied with resultant dissatisfaction. I find it difficult to explain to Georgia citizens in Augusta, Savannah, Macon and Columbus why there is no busing in Atlanta.

Even more so, is the difficulty of justifying to thousands of citizens under busing requirements why other segregated communities throughout the country not only have no busing, but in fact have no desegregation procedures whatsoever in effect. And I might add that an explanation of this in Latin—such as "de-facto de-jure"—does not make the justification any more palatible.

This situation is not only unfair and provocative, it has a tendency to undermine public confidence in our federal court system. To me it is intolerable that our courts should any longer be placed in the position of administering school systems in this controversial arena, when the problem is clearly one in which the legislative branch can and should act to relieve the courts.

Evidence of the decline of public confidence in the courts is found in rising sentiment for proposals to amend the Constitution, not only to eliminate forced busing, but to change the process by which Federal Judges are selected.

In my opinion, the sooner Congress steps in and relieves the courts of further policy making authority in the area of school desegregation, the better it will be.

Based on all these considerations, I am introducing a bill today, which I hope will serve as a substitute for President Nixon's busing moratorium. I now offer a copy of my bill for inclusion in the record of these proceedings.

In substance, the bill will implement a program which I recommended to the President's Cabinet Committee consisting of former Attorney General Mitchell, Budget Director Schultz, and HEW Secretary Richardson, shortly after that Committee was constituted at a meeting at the White House held in late February.

A statement which I made on the Senate Floor on February 29, 1972, outlining this program, is offered for inclusion in the record. (Exhibit 4.)

My plan provides for basic uniformity in application and enforcement of desegregation, without forced busing. This will permit uniformity to be achieved in an atmosphere free of emotionalism and rhetoric. The uniformity may be achieved through court decisions, but more hopefully through legislation seeking more equal education than mere desegregation can provide.

The principal difference between the plan which I proposed to the President's Cabinet Committee, and the one which the President has now offered, is that the President's plan fails to assure uniform enforcement of the equal education plan throughout the country, and, under its proposed moratorium, positively discriminates against communities and school systems in which massive forced busing programs are now underway. My proposal would have a moratorium equally applicable to all, and would assure uniform desegregation enforcement in the future.

As many of you know, I previously made an effort to have a plan of this type adopted. Following the voting on the so-called Griffin Amendment, I offered and called up an amendment seeking a complete moratorium on forced busing until a uniform policy of desegregation could be adopted and implemented. Debate on this amendment was limited to forty minutes, and I do not think that members of the Senate ever fully understood what was proposed. In fact, seventeen Republicans who voted for the Griffin Amendment, which was a complete bar to forced busing, voted against my amendment which was only a moratorium. Those votes, along with two Democratic votes in support of my amendment by Senators who had opposed the Griffin Amendment, would have assured passage of my proposal.

The failure of this amendment under those circumstances raised a serious question in my mind as to the desire of the Administration to solve the busing crisis, free of political considerations, and also causes me to doubt the sincerity of many Democratic members who advocate equal protection of the law, but do not support equal enforcement policies when they have an opportunity to do so.

The bill which I now offer follows substantially the same plan as the amendment which I offered during the debate on the Higher Education Bill. It prohibits the use of forced school busing in some parts of the country when no steps toward desegregation have been taken in most of the country's school systems.

In view of what I have said, it should go without further elaboration that I would bitterly oppose President Nixon's moratorium plan in its present form. If the moratorium can be extended, as I suggested to the Cabinet Committee, to cover all school systems now under massive busing orders, and to last until a nationally uniform school desegregation policy can be adopted and implemented, then I would support it.

But if equal protection of the law cannot be made a part of the plan, then I would just as soon have no moratorium at all. If school busing is wrong, or being questionably applied, then those who have already suffered under it should be the first to be excused. The President's moratorium to me is like coming out against capital punishment for those hereafter convicted, but letting the death sentence be executed on those waiting on death row. No fairminded person would support such a plan.

Finally, I would like to emphasize that it is my desire, and that of the people I represent, to approach this matter with positive solutions, rather than with negative objections. Commonsense will tell you that workable solutions to these very difficult problems can only be arrived at if all Americans believe that they are being treated fairly. The objectives of school desegregation and equal educational opportunity will be much better served, and more rapidly achieved, if equal protection of the law is built into the application, as well as into the concept of the program.

EXHIBIT 1

[From the Washington Post, Jan. 26, 1972]

SCHOOL CHANGES ARE LATE

(By William Raspberry)

America can never seem to figure out what to do about its poor and its black citizens.

It forces them into concentrations, whether through economics, commercial manipulation or outright segregation. And then it announces that it would be possible to deal with their problems if only the people were not so concentrated.

Even when some reasonably logical solution does suggest itself, it is almost an article of American faith that no attempt will be made to implement it until it is too late for it to be effective.

We try scattered-site public housing (or cash housing subsidies) as an alternative to public housing concentration camps, but only after the problem has grown so large that there aren't enough sites left in which to scatter the poor.

We decide to move against crime and narcotics in the ghettos only after they have become virtually intractable (and after they have become a problem for the nonblack and nonpoor).

And particularly have we moved too late in public education.

When some basic education would have been a desirable thing for blacks, white Americans made it illegal to teach blacks to read and write.

When blacks would have been ecstatic over really good segregated schools, they got schools that were separate but awful.

Local authorities are now willing to desegregate their schools, but only after the courts have said desegregation isn't enough: You have to integrate.

Always one step behind. It would be almost laughable except for the fact that the problems keep growing worse. Remedies that would have worked a few years ago become inadequate when they are applied too late. And we've finally reached the point where no one, white or black, has any clear idea of what will work now.

Virtually no one wants busing on the level it would take to integrate the schools in most metropolitan areas.

I, for one, would be willing to take one step backward, to honest desegregation. That is, let us move forthrightly against any attempt at official discrimination. But at the same time, let us end the humiliation of chasing after rich white children.

And it is humiliating. For one thing it says to black children that there is something inherently wrong with them, something that can be cured only by the presence of white children. Some of us don't believe that.

Some of us believe that given adequate resources, financial and otherwise, black chil-

dren can learn, no matter what color their seatmates happen to be.

We started off chasing after white people because that was (we thought) the sure way to get the resources we needed. Now some of us are continuing the chase although we've forgotten why it started.

As provocative as Judge Merhidge's Richmond decree was, I would have preferred a ruling that said not that pupils must be bused without regard to city boundary lines but that school money and resources must no longer stop at those boundaries.

It may still come to that. If the current trend continues, there will likely be an end to property taxes as the chief means of financing schools. And one result will be that all schools within a state will be on equal footing, no matter whether they are in rich neighborhoods or poor.

When the white and the rich discover that they cannot finance good public schools for their own children and lousy ones for the rest, we will see the beginning of equality in public education or we will see the end of public education.

EXHIBIT 2

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

MASSIVE BUSING: A WASTE

(By William Raspberry)

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

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

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

Others are talking up constitutional amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Vice President was right again when he said:

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

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

IS BUSING NECESSARY?

(By Nathan Glazer)

It is the fate of any social reform in the United States—perhaps anywhere—that, instituted by enthusiasts, men of vision, politicians, statesmen, it is soon put into the keeping of full-time professionals. This has two consequences. On the one hand, the job is done well. The enthusiasts move on to new causes while the professionals continue working in the area of reform left behind by public attention. But there is a second consequence. The professionals, concentrating exclusively on their area of reform, may become more and more remote from public opinion, and indeed from common sense. They end up at a point that seems perfectly logical and necessary to them—but which seems perfectly outrageous to almost everyone else. This is the story of school desegregation in the United States.

For ten years after the 1954 Supreme Court decision in *Brown*, little was done to desegregate the schools of the South. But professionals were at work on the problem. The NAACP Legal Defense Fund continued to bring case after case into court to circumvent the endless forms of resistance to a full and complete desegregation of the dual school systems of the South. The federal courts, having started on this journey in 1954, became educated in all the techniques of subterfuge and evasion, and in their methodical way struck them down one by one. The federal executive establishment, reluctant to enter the battle of school desegregation, became more and more involved.

The critical moment came with the passage of the Civil Rights Act in 1964, in the wake of the assassination of a President and the exposure on television of the violent lengths to which Southern government would go in denying constitutional rights to Negroes. Under Title IV of the Civil Rights Act, the Department of Justice could bring suits against school districts maintaining segregation. Under Title VI, no federal funds under any program were to go to districts that practiced segregation. With the passage of the Elementary and Secondary Education Act in 1965, which made large federal funds available to schools, the club of federal withdrawal of funds became effective. In the Department of Justice and in the Department of Health, Education and Welfare, bureaucracies rapidly grew up to enforce the law. Desegregation no longer progressed painfully from test case to test case, endlessly appealed. It moved rapidly as every school district in the South was required to comply with federal requirements. HEW's guidelines for compliance steadily tightened, as the South roared and the North remained relatively indifferent. The Department of Justice, HEW, and the federal courts moved in tandem. What the courts declared was segregation became what HEW declared was segregation. After 1969, when the Supreme Court ordered, against the new administration's opposition, the immediate implementation of desegregation plans in Mississippi, no further delay was to be allowed.

The federal government and its agencies were under continual attack by the civil-rights organizations for an attitude of moderation in the enforcement of both court orders and legal requirements. Nevertheless, as compared with the rate of change in the years 1954 to 1964, the years since 1964 have seen an astonishing speeding-up in the process of desegregating the schools of the South.

Writing during the Presidential campaign of 1968, Gary Orfield, in his massive study, *The Reconstruction of Southern Education*, stated:

"To understand the magnitude of the social transformation in the South since 1964, that portrait of hate [of black students walking into Little Rock High School under the protection of paratroopers' bayonets] must be compared to a new image of tense but peaceful change. Even in the stagnant red clay counties in rural backwaters, where racial attitudes have not changed much for a century, dozens or even hundreds of black children have recently crossed rigid caste lines to enter white schools. Counties with well-attended Ku Klux Klan cross-burning have seen the novel and amazing spectacle of Negro teachers instructing white classes. It has been a social transmutation more profound and rapid than any other in peacetime American history.

"This is a revolution whose manifesto is a court decision and whose heroes are bureaucrats, judges, and civil-rights lawyers. . . ."

Mr. Orfield thought it was all coming to an end. With Nixon attacking the guidelines that had brought such progress, and with the civil-rights coalition coming apart in the fires of the cities of the North, Mr. Orfield wrote, "A clear electoral verdict against racial reconciliation [that is, the election of Mr. Nixon] could mean that the episode of the school guidelines may recede into history of an interesting but futile experiment." Mr. Orfield underestimated the bureaucrats, the courts, and the overall American commitment to the desegregation of Southern schools. While Mr. Nixon's appointees were suffering the same abuse as Mr. Johnson's before them for insufficient zeal, the desegregation of the racially divided school systems of the South proceeded. Thus the Director of the HEW Office of Civil Rights, J. Stanley Pottinger, could summarize some of the key statistics as of 1970 in the following terms:

"When school opened in the fall of 1968, only 18 per cent of the 2.9 million Negro

children in the Southern states attended schools which were predominantly white in their student enrollments. In the fall of 1970, that figure had more than doubled to 39 per cent . . . [and] the percentage of Negroes attending 100 per-cent black schools dropped . . . from 68 per cent to 14 per cent. In 1968, almost no districts composed of majority Negro (and other minority) children were the subject of federal enforcement action. It was thought . . . that the limited resources of government ought to be focused primarily on the districts which had a majority of white pupils, where the greatest educational gains might be made, and where actual desegregation was not as likely to induce white pupils to flee the system. . . . 40 per cent of all the Negro children in the South live in [such] systems. . . . Obviously, the greater the amount of desegregation in majority black districts, the fewer will be the number of black children . . . who will be counted as "desegregated" under a standard which measures only those minority children who attend majority white schools.

"In order to account for this recent anomaly, HEW has begun to extract from its figures the number of minority children who live in mostly white districts and who attend mostly white schools. Last year, approximately 54 per cent of the Negro children in the South who live in such districts attended majority white schools. Conversely, nearly 40 per cent of the 2.3 million white children who live in mostly black (or minority) districts now attend mostly black (or minority) schools."[1]

There has been further progress since, and if one uses as the measure the number of blacks going to schools with a majority of white children, the South is now considerably more integrated than the North.

Yet the desegregation of schools is once again the most divisive of American domestic issues. Two large points of view can be discerned as to how this has happened. To the reformers and professionals who have fought this hard fight—the civil-rights lawyers, the civil-rights organizations, the government officials, the judges—the fight is far from over, and even to review the statistics of change may seem an act of treason in the war against evil. Indeed, if one is to take committed supporters of civil rights at their word, there is nothing to celebrate. A year ago the Civil Rights Commission, the independent agency created by the Civil Rights Act of 1957 to review the state of civil rights, attacked the government in a massive report on the civil rights enforcement efforts. "Measured by a realistic standard of results, progress in ending inequity has been disappointing. . . . In many areas in which civil rights laws afford pervasive legal protection—education, employment, housing—discrimination persists, and the goal of equal opportunity is far from achievement." And the report sums up the gloomy picture of Southern school segregation, 16 years after *Brown:* "Despite some progress in Southern school desegregation . . . a substantial majority of black school children in the South still attend segregated schools."[2] Presumably, then, when a majority of Negro children attended schools in which whites were the majority, success by one measure should have been reported. But in its follow-up report one year later, this measure of success in Southern school desegregation was not even mentioned. The civil-rights enforcement effort in elementary and secondary schools, given a low "marginal" score for November 1970 (out of four possibilities," "poor," "marginal," "adequate," and "good"), is shown as having regressed to an even *lower* "marginal" score by May 1971, after HEW's most successful year in advancing school integration!

But from the point of view of civil-rights advocates, desegregation as such in the South is receding as a focus of attention. A second generation of problems has come increasingly to the fore: dismissal or demotion of black school principals and teachers as integration progresses and their jobs are to be given to whites; expulsions of black students for disciplinary reasons; the use of provactive symbols (the Confederate flag, the singing of "Dixie"); segregation within individual schools based on tests and ability grouping; and the rise of private schools in which whites can escape desegregation.

But alongside these new issues, there is the reality that the blacks of the North and West are also segregated, not to mention the Puerto Ricans, Mexican Americans, and others. The civil-rights movement sees that minorities are concentrated in schools that may be all or largely minority, sees an enormous agenda of desegregation before it, and cannot pause to consider a success which is already in its mind paltry and inconclusive. The struggle must still be fought, as bitterly as ever.

There is a second point of view as to why desegregation, despite its apparent success, is no success. This is the Southern point of view, and now increasingly the Northern point of view. It argues that a legitimate, moral, and Constitutional effort to eliminate the unconstitutional separation of the races (most Southerners now agree with this judgment of *Brown*), has been turned into something else—an intrusive, costly, painful, and futile effort to regroup the races in education by elaborate transportation schemes. The Southern Congressmen who for so long tried to get others to listen to their complaints now watch with grim satisfaction the agonies of Northern Congressmen faced with the crisis of mandatory, court-imposed transportation for desegregation. On the night of November 4, 1971, as a desperate House passed amendment after amendment in a futile effort to stop busing. Congressman Edwards of Alabama said:

"Mr. Chairman, this will come as a shock to some of my colleagues. I am opposing this amendment. I will tell you why. I look at it from a rather cold standpoint. We are busing all over the First District of Alabama, as far as you can imagine. Buses are everywhere . . . people say to me, 'How in the world are we ever going to stop this madness?' I say, 'It will stop the day it starts taking place across the country, in the North, in the East, in the West, and yes, even in Michigan.'"

And indeed, one of the amendments had been offered by Michigan Congressmen, longtime supporters of desegregation, because what had been decreed for Charlotte, North Carolina, Mobile, Alabama, and endless other Southern cities was now on the way to becoming law in Detroit and its suburbs.

As a massive wave of antagonism to transportation for desegregation sweeps the country, the liberal Congressmen and Democratic Presidential aspirants who have for so long fought for desegregation ask themselves whether there is any third point of view: whether they must join with the activists who say that the struggle is endless and they must not flag, even now; or whether they must join with the Southerners. To stand with the courts in their latest decisions is, for liberal Congressmen, political suicide. A Gallup survey last October revealed that 76 per cent of respondents opposed busing, almost as many in the East (71 per cent), Midwest (77 per cent), and West (72 per cent), as in the South (82 per cent); a majority of Muskie supporters (65 per cent) as well as a majority of Nixon supporters (85 per cent). Even more blacks opposed busing than support it (47 to 45 per cent). But if to stand with the further extension to all the Northern cities and suburbs of transportation for desegregation is suicide, how can the liberal Congressmen join with the South and with what they view as Northern bigotry in opposing busing? Is there a third position, something which responds to the wave of frustration at court orders, and which does not mean the abandonment of hope for an integrated society?

How have we come from a great national effort to repair a monstrous wrong to a situation in which the sense of right of great majorities is offended by policies which seem continuous with that once noble effort? In order to answer this question, it is necessary to be clear on how the Southern issue became a national issue.

After the passage of the Civil Rights Act of 1964, the first attempt of the South to respond to the massive federal effort to impose desegregation upon it was "freedom of choice." There still existed the black schools and the white schools of a dual school system. But now whites could go to black schools (none did) and the blacks could go to white schools (few dared). It was perfectly clear that throughout the South "freedom of choice" was a means of maintaining the dual school system. In 1966 HEW began the process of demanding statistical proof that substantially more blacks were going to school with whites each year. The screw was tightened regularly, by the courts and HEW, and finally, in 1968, the Supreme Court gave the *coup de grâce,* insisting that dual school systems be eliminated completely. There must henceforth be no identifiable black schools and white schools, only schools.

But one major issue remained as far as statistical desegregation was concerned: the large cities of the South. For the fact was that the degree of segregation in the big-city Southern schools was by now no longer simply attributable to the dual school systems they, too, had once maintained; in some instances, indeed, these schools had even been "satisfactorily" (by some federal or court standard) desegregated years before. What did it mean to say that their dual school systems must also be dismantled "forthwith"?

Contrast, as a concrete instance, the case of rural New Kent County in Virginia, where the Supreme Court declared in 1968 that "freedom of choice" would not be accepted as a means of desegregating a dual school system. Blacks and whites lived throughout the country. There were two schools, the historic black school and the historic white school. Under "freedom of choice," some blacks attended the white school, and no whites attended the black school. There was a simple solution to desegregation, here and throughout the rural and small-town South, and the Supreme Court insisted in 1968, fourteen years after *Brown,* that the school systems adopt it: to draw a line which simply made two school districts, one for the former black school, and one for the former white school, and to require all children in one district, white and black, to attend the former black school, and all children in the other, white and black, to attend the former white school.

But what now of Charlotte, Mobile, Nashville, and Norfolk? To draw geographical lines around the schools of these cities, which had been done, meant that many white schools remained all white, and many black schools remained all black. Some schools that had been "desegregated" in the past—that is, had experienced some mix of black and white—had already become "resegregated"—that is, largely black or all black as a result of population movements rather than any official action.

If there were to be no black schools and no white schools in the city, one thing at least was necessary; massive transportation of the children to achieve a proper mix. There was no solution in the form of geographical zoning.

But if this was the case, in what way was their situation different from that of Northern cities? In only one respect: the Southern cities had once had dual school systems, and the Northern cities had not. (Even this was not necessarily a decisive difference, for cities

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Footnotes at end of article.

outside the Old South had also maintained dual systems until 1954. Indiana had a law permitting them until the late 1940's, and other cities had maintained dual systems somewhat earlier.) Almost everything else was the same. The dynamics of population change were the same. Blacks moved into the central city, whites moved out to the suburbs. Blacks were concentrated in certain areas, owing to a mixture of formal or informal residential discrimination, past or present, economic incapacity, and taste, and these areas of black population became larger and larger, making full desegregation by contiguous geographical zoning impossible. Even the political structures of Southern and Northern cities were becoming more alike. Southern blacks were voting, liberal candidates appealed to them, Southern blacks sat on city councils and school boards. If one required the full desegregation of Southern cities by busing, then why should not one require the full desegregation of Northern cities by busing?

Busing has often been denounced as a false issue. Until busing was decreed for the desegregation of Southern cities, it was. As has been pointed out again and again, buses in the South regularly carried black children past white school to black schools, and white children past black schools to white schools. When "freedom of choice" failed to achieve desegregation and geographical zoning was imposed, busing sometimes actually declined. In any case, when the school systems were no longer allowed to have buses for blacks and buses for whites, certainly the busing system became more efficient. After 1970, busing for desegregation replaced the busing for segregation.

But this was not true when busing came to Charlotte, North Carolina, and many other cities of the South, in 1971, after the key Supreme Court decision in *Swann* v. *Charlotte-Mecklenburg County Board of Education*. The City of Charlotte is 64 square miles, larger than Washington, D.C., but it is a part of Mecklenburg County, with which it forms a single school district of 550 square miles, which is almost twice the size of New York City. Many other Southern cities (Mobile, Nashville, Tampa) also form part of exceptionally large school districts. While 29 per cent of the schoolchildren of Mecklenburg County are black, almost all live in Charlotte. Owing to the size of the county, 24,000 of 84,500 children were bused, for the purpose of getting children to schools beyond walking distance. School zones were formed geographically, and the issue was, could all-black and all-white schools exist in Mecklenburg County, if a principle of neighborhood school districting meant they would be so constituted?

The Supreme Court ruled they could not, and transportation could be used to eliminate black and white schools. The Court did not argue that there was a segregative intent in the creation of geographical zones—or that there was not—and referred to only one piece of evidence suggesting an effort to maintain segregation, free transfer. There are situations in which free transfer is used by white children to get out of mostly black schools, but if this had been the problem, the Court could have required a majority-to-minority transfer only (in which one can only transfer from a school in which one's race is a majority, and to a school in which one's race is a minority), as is often stipulated in desegregated plans. Instead the Court approved a plan which involved the busing of some 20,000 additional children, some for distances of up to 15 miles, from the center of the city to the outer limits of the county, and vice versa.

Two implications of the decision remain uncertain but they may lead to a reorganization of all American education. If Charlotte, because it is part of the school district of Mecklenburg County, can be totally desegregated with each school having a roughly 71–29 white-black proportion, should not city boundaries be disregarded in other places and larger school districts of the Mecklenburg County scale be created wherever such action would make integration possible? A district judge has already answered this question in the affirmative for Richmond, Virginia.

But the second implication is: If Charlotte is—except for the background of a dual school system—socially similar to many Northern cities, and if radical measures can be prescribed to change the pattern that exists in Charlotte, should they not also be prescribed in the North? And to that question also a federal judge, ruling in a San Francisco case, has returned an affirmative answer.

San Francisco has a larger measure of integration probably than most Northern cities. Nevertheless *de facto* segregation—the segregation arising not from formal decisions to divide the races as in the South, but from other causes, presumed to be social and demographic—has long been an issue in San Francisco. In 1962, the NAACP filed suit against the school board, charging it with, "affording, operating, and maintaining a racially segregated school system within the San Francisco Unified School District, contrary to and in violation of the equal protection and due process clause of the Fourteenth Amendment of the Constitution of the United States." As John Kaplan has written:

"The history of this suit is a short and strange one. The Board of Education retained for its defense a distinguished local attorney, Joseph Alioto [now the mayor], who was primarily an anti-trust specialist. Alioto started discovery proceedings and the heart seemed to go out of the plaintiffs.

"In any case, after admitting in depositions that the Board had no intention to produce a condition of racial imbalance; that it took no steps to bring about such a condition; that its lines were not drawn for the purpose of creating or maintaining racial imbalance; that there was no gerrymandering; and finally that the Board was under no obligation to relieve the situation by transporting students from their neighborhoods to other districts, the plaintiffs' attorney allowed the suit to be dismissed for want of prosecution on December 2, 1964."

It was assumed that this disposed of the legal issue. Meanwhile the San Francisco school system continued to struggle with the problem. After a long series of censuses, disputes, and studies, the school board proposed to set up two new integrated complexes, using transportation to integrate, one North and one South of Golden Gate Park. They were to open in 1970. When, however, one was postponed because of money problems, suit was brought once again by integration-minded parents, this time charging *de jure* segregation on the ground that the school board's failure to implement the two integrated school complexes amounted to an official act maintaining the schools in their presently segregated state.

Judge Stanley Weigel, before whom the matter was argued, very sensibly decided to wait for the Supreme Court's ruling in the Charlotte-Mecklenburg County case which, he and many others thought, might once and for all settle the question of whether *de facto* segregation was no less unconstitutional than *de jure* segregation. Although one may doubt from certain passages in the Charlotte-Mecklenburg decision that the Supreme Court did indeed mean to outlaw *de facto* segregation, Judge Weigel seems to have decided that it did. "The law is settled," he declared, "that school authorities violate the constitutional rights of children by establishing school attendance boundary lines knowing that the result is to continue or increase substantial racial imbalance."

But in ordering the desegregation of the San Francisco schools by transportation, Judge Weigel did not simply rest the matter on *de facto* segregation; he also listed acts of commission and omission which he believed amounted to *de jure* school segregation.

Now one can well imagine that a school board which does not or did not recently operate under state laws that required or permitted segregation could nevertheless through covert acts—which are equally acts under state authority—foster segregation. It could, for example, change school-zone lines, so as to confine black children in one school and permit white children to go to another school. It could build schools and expand them so that they served an all-black or all-white population. It could permit a transfer policy whereby white children could escape from black schools while blacks could not. It could assign black teachers to black schools and white teachers to white schools.

Judge Weigel charged all these things. The record—a record made by a liberal school board, appointed by a liberal mayor, in a liberal city, with a black president of the school board—does not, in this layman's opinion, bear him out, unless one is to argue that any action of a school board in construction policy or zone-setting or teacher assignment that precedes a situation in which there are some almost all-black schools (there were no all-black schools in San Francisco) and some almost all-white schools (there were no all-white schools in San Francisco) can be considered *de jure* segregation.

Under Judge Weigel's interpretation, there is no such thing as *de facto* segregation. All racial imbalance is the result of state actions, either taken or not taken. If not taken, they should have been taken. *De facto* disappears as a category requiring any less action than *de jure*.

This is the position of many lawyers who are arguing these varied cases. I have described the San Francisco case because it led to a legal order requiring desegregation by transportation of the largest Northern or Western system so far affected by such an order. But massive desegregation had also been required by a district judge in Denver, who had then had his judgment limited by the Circuit Court of Appeals. Is it this Denver case that will become the first case on Northern or Western *de facto* school segregation—if we still allow the term some meaning—to be heard by the Supreme Court. What the Supreme Court will have to decide is whether the historical difference between Charlotte and Denver permits Denver or any other city to do any less than Charlotte has been required to do in order to integrate its schools.

Simultaneously, Detroit and the surrounding counties and the state of Michigan are under court order to come up with a plan that permits the desegregation of the school children of Detroit by busing to the neighboring suburbs, and a federal judge is moving toward the same result in Indianapolis. If the Supreme Court should uphold the district judge's ruling in the Richmond case, it will then similarly have to decide whether anything in the history or practices of Detroit and Indianapolis justifies ordering less in those cities than has been ordered in the city of Richmond.

The hardy band of civil-rights lawyers now glimpses—or glimpsed, before the two latest appointments to the Supreme Court—a complete victory, based on the idea that there is no difference between *de facto* and *de jure* segregation, an idea which is itself based on the larger idea that there is no difference between North and South. What is imposed on the South must be imposed on the North. As Ramsey Clark, a former Attorney-General

of the United States, puts it, echoing a widely shared view:

"In fact, there is no *de facto* segregation. All segregation reflects some past actions of our governments. The FHA itself required racially restrictive covenants until 1948. But, that aside, the consequences of segregated schooling are the same whatever the cause. Segregated schools are inherently unequal however they come to be and the law must prohibit them whatever the reason for their existence."

In other words, whatever exists is the result of state action. If what exists is wrong, state action must undo it. If segregated schools were not made so by official decisions directly affecting the schools, then they were made so by other official decisions—Clark, for example, points to an FHA policy in effect until 1948—that encouraged residential segregation. Behind this argument rests the assumption, now part of the liberal creed, that racism in the North is different, if at all, from racism in the South only in being more hypocritical. All segregation arises from the same evil causes, and all segregation must be struck down. This is the position that many federal judges are now taking in the North—even if, as Judge Weigel did, they try to protect themselves by pointing to *some* action by the school board that they think might make the situation *de jure* in the earlier sense as well.

II

I believe that three questions are critical here. First, do basic human rights, as guaranteed by the Constitution, require that the student population of every school be racially balanced according to some specified proportion, and that no school be permitted a black majority? Second, whether or not this is required by the Constitution, is it the only way to improve the education of black children? Third, whether or not this is required by the Constitution, and whether or not it improves the education of black children, is it the only way to improve relations between the races?

These questions are in practice closely linked. What the Court decides is constitutional is very much affected by what it thinks is good for the nation. If it thinks that the education of black children can only be improved in schools with black minorities, it will be very much inclined to see situations in which there are schools with black majorities as unconstitutional. If it thinks race relations can only be improved if all children attend schools which are racially balanced, it will be inclined to find constitutional a requirement to have racial balance.

This is not to say that the courts do not need authority in the Constitution for what they decide. But this authority is broad indeed and it depends on a doctrine of judicial restraint—which has not been characteristic of the Supreme Court and subordinate federal courts in recent years—to limit judges in demanding what they think is right as well as what they believe to be within the Constitution. Indeed, is was in part because the Supreme Court believed that Negro children *were* being deprived educationally that it ruled as it did in *Brown*. They were being deprived because the schools were very far from "separate and equal." But even if they were "equal," their being "separate" would have been sufficient to make them unconstitutional: "To separate them from others of similar age and qualifications simply because of their race generates a feeling of inferiority as to their race and status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

While much has been made of the point that the Court ruled as it did because of the evidence and views of social scientists as to the effects of segregation on the capacity of black children to learn, the fact is that the basis of the decision was that distinctions by race had no place in American law and public practice, neither in the schools, nor, as subsequent rulings asserted, in any other area, whether in waiting rooms or golf courses. This was clearly a matter of the "equal protection of the laws." It was more problematic as to what should be done to insure the "equal protection of the laws" when such protection had been denied for so long by dual school systems. But remedies were eventually agreed upon, and the Court has continued to rule unanimously—as it did in *Brown*—on these remedies down through *Swann* v. *Charlotte-Mecklenburg Board of Education*.

Inevitably, however, the resulting increase in the freedom of black children—the freedom to attend the schools they wished—entailed a restriction on the freedom of others. In "freedom of choice," the freedom of white children was in no way limited. In geographical zoning to achieve integration, it was limited, but no more than that of black children. But in busing to distant schools, white children were in effect being conscripted to create an environment which, it had been decided, was required to provide equality of educational opportunity for black children. It was perhaps one thing to do this when the whites in question were the children or grandchildren of those who had deprived black children of their freedom in the past. But when a district judge in San Francisco ruled that not only white children but Chinese children and Spanish-speaking children must be conscripted to create an environment which, be believed, would provide equality of educational opportunity for black children, there was good reason for wondering whether "equal protection of the laws" was once again being violated, this time from the other side.

We are engaged here in a great enterprise to determine what the "equal protection of laws" should concretely mean in a multiracial and multi-ethnic society, and one in which various groups have suffered differing measures of deprivation. The blacks have certainly suffered the most, but the Chinese have suffered too, as have the Spanish-speaking groups, and some of the white ethnic groups. Is it "equal protection of the laws" to prevent Chinese-American children from attending nearby schools in their own community, conveniently adjacent to the afternoon schools they also attend? Is it "equal protection of the laws" to keep Spanish-speaking children from attending school in which their numerical dominance has led to bilingual classes and specially trained teachers? Can the Constitution possibly mean that?

One understands that the people do not vote on what the Constitution means. The judges decide. But it is one thing for the Constitution to say that, despite how the majority feels, it must allow black children into the public schools of their choice; and it is quite another for the Constitution to say, in the words of its interpreters, that some children, owing to their race or ethnic group alone, may not be allowed to attend the schools of their choice, even if their choice has nothing to do with the desire to discriminate racially. When, starting with the first proposition, one ends up with the second, as one has in San Francisco, one wonders if the Constitution can possibly have been interpreted correctly.

Again and again, reading the briefs and the transcripts and the analyses, one finds the words "escape" and "flee." The whites must not escape. They must not flee. Constitutional law often moves through strange and circuitous paths but perhaps the strangest yet has been the one whereby beginning with an effort to expand freedom—no Negro child shall be excluded from any public school because of his race—the law has ended up with as drastic a restriction of freedom as we have seen in this country in recent years. No child, of any race or group, may "escape" or "flee" the experience of integration. No school district may facilitate such an escape. Nor may it even (in the District decision) fail to take action to close the loopholes permitting anyone to escape.

Let me suggest that, even though the civil-rights lawyers may feel that in advocating measures like these they are in the direct line of *Brown*, something very peculiar has happened when the main import of an argument changes from an effort to expand freedom to an effort to restrict freedom. Admittedly the first effort concerned the freedom of blacks, the second in large measure concerns the freedom of whites (but not entirely, as we have seen from the many instances in the South where the blacks have resisted the elimination of black schools, and in the North where they have fought for community-controlled schools). Nevertheless, the tone of civil-rights cases has turned from one in which the main note is the expansion of freedom, into one in which the main note is the imposition of restrictions. It is ironic to read in Judge Stanley Weigel's decision, following which every child in the San Francisco elementary schools was placed in one of four ethnic or racial categories and made subject to transportation to provide an average mix of each in every school, an approving quotation from Judge Skelly Wright:

"The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity, and forbearance from all of us, of whatever race. But the principle is that we are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God."

That was the language of 1956. One finds very little "patience, understanding," etc., in Judge Weigel's own decision, which required the San Francisco School District to prepare a plan to meet the following objectives:

Full integration of all public elementary schools so that the ratio of black children to white children will then be and thereafter continue to be substantially the same in each school. To accomplish these objectives the plans may include:

(a) Use of non-discriminatory busing if, as appears now to be clear, at least some busing will be necessary for compliance with the law.

(b) Changing attendance zones wherever necessary to head off racial segregation.

According to Judge Weigel, the law even requires:

"Avoidance of the use of tracking systems or other educational techniques or innovations without provision for safeguard against racial segregation as a consequence."

Can all this be in the Constitution too?

A second issue that would seem to have some constitutional bearing is whether those who are to provide the children for a minority black environment are being conscripted only on the basis of income. The prosperous and the rich can avail themselves of private schooling, or they can "flee" to the suburbs. And if the Richmond and Detroit rulings should be sustained, making it impossible to "escape" by going to the suburbs, the class character of the decisions would become even more pronounced. For while many working class and lower-middle class people can afford to live in suburbs, very few can afford the costs of private education.

Some observers have pointed out that leading advocates of transportation for integration—journalists, political figures, and judges—themselves send their children to private schools which escape the consequences of these legal decisions. But even without being *ad hominem*, one may raise a moral question: If the judges who are im-

posing such decisions, the lawyers who argue for them (including brilliant young lawyers from the best law schools employed by federal poverty funds to do the arguing), would not themselves send their children to the schools their decisions bring into being, how can they insist that others poorer and less mobile than they are do so? Clearly those not subject to a certain condition are insisting that others submit themselves to it, which offends the basic rule of morality in both the Jewish and Christian traditions. I assume there must be a place for this rule in the Constitution.

A key constitutional question with which the Supreme Court will now finally have to deal is whether *de facto* segregation is really different from *de jure* segregation, and if so, whether lesser remedies can be required to eradicate it.

Is there really a meaningful difference between a 100 per-cent black school under a law that prohibits blacks from going to school with whites, and a 100 per-cent black school that is created by residential segregation? The question has become even subtler: Is there a difference between a majority black school in a city which once had *de jure* segregation, and such a school in a city which did not? I believe that the answer to the second question is no. But in the first case the distinction was meaningful when the Supreme Court handed down *Brown* and is meaningful today. In the *de facto* situation, to begin with, not all schools are 100 per cent segregated. Indeed, none may be. A child's observation alone may demonstrate that there are many opportunities to attend integrated schools. The family may have an opportunity to move, the city may have open enrollment, it may have a voluntary city-to-suburb busing program. The child may conclude that if one's parents wished, one could attend another school, or that one could if one lived in another neighborhood—not all are inaccessible economically or because of discrimination—or could conclude that the presence of a few whites indicated that the school was not segregated.

Admittedly social perception is a complicated thing. The child in a 100 per-cent black school as a result of residential concentration and strict zoning may see his situation as identical to that of a child in a 100 per-cent black school because of state law requiring separation of the races. But the fact is that a black child in a school more than 47 per-cent black (the San Francisco definition of "segregation") may also see himself as unfairly deprived. Or any black child at all, in view of his history, and the currently prevailing interpretation of his position, even if he is the only black child in a white school, may so conclude. Perception is not only based on reality, a reality which to me makes the *de facto* segregated school a very different thing from the *de jure* segregated school. Perception can turn the lovely campuses of the West Coast into "jails" which confine young people, and can turn those incarcerated by courts for any crime into political prisoners. If we feel a perception is wrong, one of our duties is to try to correct it, rather than to assume that the perception of being a victim must alone dictate the action to be taken. False perceptions are to be responded to sympathetically, but not as if they were true.

If one finds segregation of apparently *de facto* origin, what is the proper remedy?

In some cases, one can show that it is not really *de facto* by pointing to actions that the school board took with a segregatory intent—for example, changing a school-zone line when blacks moved into an area to keep a school all or mostly black or another one all or mostly white. I do not think this was demonstrated in the case of San Francisco, but it was the crucial issue in the first Northern school desegregation case, that of New Rochelle, which was never reviewed by the Supreme Court, and in Pontiac, Michigan, and for some schools in Denver. In districts with a hundred or more schools and a long history, with perhaps scores of school-zone lines changed every year, it would be unlikely if one could not come up with some cases that seemed to show this. Sometimes it was done under pressure of local white parents. Finding this, a court might require something as simple as that the zone line be changed back (this, of course, by the time it came to court would hardly matter since the black residential area would almost certainly have expanded and both zone lines would probably be irrelevant). Or it might require that no zone line be set in the future which had the effect of maintaining segregation. Or that no parental wishes of this sort be taken into account. In cases where segregatory zone lines were commonly or regularly set (Pontiac) more radical relief would be more appropriate.

But there is a basic and troubling question here. School boards are either elected, or appointed by elected officials. They are thus directly or indirectly responsible to ctiizens. One can well understand the constitutional doctrine which asserts that no elected or appointed board, no governmental official, may deny constitutional rights—e.g., allowing a Communist to speak in a school building—regardless of the wishes of its constituency. But in the case of schooling and school-zone boundary-setting, a host of issues is involved: convenience of access, quality of building, assumed quality of teaching staff, racial composition of students, etc. A board is subject to a hundred influences in making such a decision. It is not as simple a matter as proving this Communist was not allowed to speak because of mass pressure. Nor is the motivation of parents and boards ever unmixed.

In Boston the school board opened a new school in a black section. It tried to save the state aid that would be lost if it did not take some action to desegregate, and it zoned children living at some distance away into the new school. The white parents protested and eventually the board succumbed to their pressure and allowed them to send their children to their old nearby schools. To the minds of most enforcers of school desegregation, state and national, the board condemned itself for a segregatory act. One of the things the boycotting parents said was that they were afraid their children would get beaten up going through the area they had to traverse in order to get to school. Who is to say that this was pure fantasy, in the conditions of the modern city, and that what the white parents really meant was that they did not want their children to go to a mostly black school? It is this kind of determination on the intent and effect of hundreds of school-board decisions that judges are now required to make. When one read cases such as those in Indianapolis, Detroit, and elsewhere, the mind reels with the complexity of numerous school-zoning and construction decisions. Briefs, hearing transcripts, exhibits run to thousands of pages. And at least one conclusion that this reader comes to is that no judge can or ought to have to make decisions on such issues, and the chances are that whatever decision he makes will be based on inadequately analyzed information.

Is it the law—and, not being a lawyer, I do not know—that if a segregatory intent plays *any* part in school decisions, then *every* measure of relief, no matter how extensive is justified? If so, from a non-legal point of view it seems odd that one uncertain act with an uncertain effect on the social and racial patterns of an entire city should justify massive measures to reconstruct a school system.

Perhaps the most serious constitutional issue in a line of cases erasing the distinction between *de jure* and *de facto* segregation and also erasing the political boundaries between school districts in order to achieve a racial balance in which every black student is in a minority in every school (and presumably, as the cases develop, every Spanish-speaking student, and so on), is that all this makes impossible one kind of organization that a democratic society may wish to choose for its schools: the kind of organization in which the schools are the expression of a geographically defined community of small scale and regulated in accordance with the democratically expressed views of that community. This is the point Alexander Bickel has argued so forcefully. We have had a good deal of discussion in recent years of "decentralization," "community control," and "parental control" of schools. There were reasons for "community control" long before the issue exploded in New York in the late 1960's, and there were reasons for "parental control" long before the educational voucher scheme was proposed. Now the new line of cases makes the school ever more distant from the parents who send their children to it.

While busing schemes vary, in some, children from a number of different areas are sent to a single school and children from one area are sent to a number of schools. It becomes hard for parental or community concerns to be exercised on the particular school to which one's children go. Thus, in San Francisco, in the Mission district, owing to the effective work of the Mission Coalition (an Alinsky-style community organization), the local community has considerable influence on public programs in the area. With a wide base of membership, this organization can help determine what is most effective in the local schools. But if it wants to create an atmosphere in the school best suited to the education of Spanish-speaking children, what sense does this make when the schools are filled with children from distant areas? And how can it influence the education the Mission children receive in the distant schools to which many of them are now sent?

In effect, the new line of cases gives enormous control to central school bureaucracies, who will make decisions subject only to the courts and the federal government on the one hand, and the mass opinion of a large area dominated by the inevitable slogans which can create majorities on the other. Clearly this is one way of reducing the influence of people over their own environment and their own fate. I believe indeed that the worst effect of the current crisis is that people already reduced to frustration by their inability to affect a complex society and a government moving in ways many of them find incomprehensible and undesirable, must now see one of the last areas of local influence taken from them in order to achieve a single goal, that of racial balance.

The one reason for community control that has recently been considered most persuasive is that the inadequate education of black children may be improved under a greater measure of black community control. This may or may not be the case, but I believe that all people, black and white, have the right to control as much of their lives as is possible in a complex society, and the schools are very likely the only major function of government which would not suffer—and might even benefit—from a greater measure of local control. In education, there are few "economies of scale." It has always seemed fantastic that educators, in proposing "complexes" for 20,000 elementary-school children for purposes of desegregation, could also argue that schools of that size would also be more "efficient." Interestingly, lawyers and judges, in their effort to find *de jure* segregatory intent in the acts of Northern school boards, will sometimes claim that schools were deliberately made small to lessen the chances of integration. Thus in Detroit, one

charge against the school board, accepted by Judge Roth, was that the board built small schools of 300 in order to contain the population and make desegregation more difficult. Paul Goodman and many others would argue that even schools of 300 are probably too large. In San Francisco, on the other hand, the argument was that schools were expanded to "contain" the black and white population. The Detroit judge, it seems, would have preferred the large San Francisco schools, and the San Francisco judge would have preferred the small Detroit schools, if one takes their arguments at face value. But one may be allowed to suspect that if the situations had been reversed, they would still both have found *"de jure"* segregation in their respective cities.

One consequence of this transfer of ports for racial balance is that there is no local pressure to build a school to serve a local population, since one cannot know what the effect of any local school will be. Thus all decisions on school building revert to the hands of the central school authorities, only affected, as I have already pointed out, by judges and the federal government on the one hand, and a mass opinion unrelated to local district needs on the other. I am skeptical as to whether this will improve school-construction policies. Federal civil-rights agencies and judges have not as yet shown themselves very perceptive in their criticism of local school-construction policies. One piece of evidence of *de jure* segregation, cited by the San Francisco judge, was the building of a new school in Hunter's Point, a black area. The school authorities had resisted building there. The local people insisted on a new school. Just about everyone who supports desegregation in San Francisco supported the local people, even though they knew that the school would be segregated. The local NAACP also supported the building of the new school. The judge, in his decision, cited the building of this school as a sign of the "segregatory" policies of the San Francisco school authorities. To the judge, the black people of Hunter's Point were being "contained," when they should have been sent off elsewhere, leaving their own area devoid of schools (or perhaps any other facilities). But for the people of the area who demanded the school, they were being served. That their school would be, to a federal judge's mind, "segregated" did not seem to them a good reason for all city facilities to be built only in white or Spanish-speaking or Chinese areas.

The attempts of judges and civil-rights lawyers to argue that this or that school was built to be "segregated" for whites or blacks is in any case often naive. The dynamics of population movements in the cities have been too rapid (the black population of San Francisco increased from 5,000 in 1940 to 96,000 in 1970) and the process of school-building too slow, for any such intention to be easily demonstrated or realized in Northern cities. One of the schools cited in the San Francisco case as "segregated" blacks (64 per-cent black in 1964), had been cited as recently as 1967 in the Civil Rights Commission's report on *Racial Isolation in the Public Schools* as having been built in order to foster the "segregation" of white, since it had opened in 1954 with a student body that was almost all white. Presumably, at least for the intervening period, it must have been integrated.

The crucial point is: Do federal courts have the right to impose a school policy that would deprive local communities and groups, white and black, of power over their schools? Some of them seem quite sure that they do. Judge Roth in Detroit is critical of the blacks of that city for contributing to what he considers "segregation" by demanding black principals and teachers:

"In the most realistic sense, if fault or blame is to be found it is that of the community as a whole, including of course the black components. We need not minimize the effect of the actions of federal, state, and local governmental officers and agencies . . . to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is a place of confinement and a place of refuge. There is enough blame for everyone to share."

We would all agree with Judge Roth that the ghetto must not be a place of confinement and that everything possible must be done to make it as easy for blacks to live where they wish as it is for anyone else. But why should it be the duty or the right of the federal government and the federal judiciary to destroy the ghetto as a place of refuge if that is what some blacks want? Judge Roth is trying to read into the Constitution the crude Americanizing and homogenizing which is certainly one part of the American experience, but which is just as certainly not the main way we in this country have responded to the facts of a multi-ethnic society. The doctrines to which Judge Roth lends his authority would deny not only to blacks, but to any other group, a right of refuge which is quite properly theirs in a multi-ethnic society built on democratic and pluralist principles.

I do not speak here of limiting what communities may freely choose to do in order to integrate their schools. I speak only of the judicial insistence that they must do certain things. Much busing for desegregation is engaged in by school boards independently of court decisions, because the board feels this is good for education; or because it is under pressure from blacks and white liberal citizens who demand such measures; or because it is required or is under pressure to do so from state education authorities—who, in the major Northern and Western states, and in particular in Massachusetts, New York, Pennsylvania, and California, require local school districts to eliminate racial imbalance defined in various ways. More than 50 percent black is racial imbalance in Massachusetts, and 15 percent more or less of each group in each school than the proportion of that group in the entire district is racial imbalance in California. (It was on the basis of the 15 percent rule that more than 47 percent black was considered segregated in San Francisco, for the proportion of black students in the schools was 32 per cent.) Thus, the City of Berkeley has been transporting its children to achieve integration for three years now, without any court or federal action. Riverside has done the same. Many cities have implemented, independently of court action, some degree of transportation for integration. Many of these actions have been attacked in the courts from the other side—that is, by white parents charging that for racial reasons alone they were being assigned to schools far from their homes. All these challenges have been struck down in the courts, in spite of state laws (such as New York's) which declare transportation for desegregation illegal. Interestingly enough, while the San Francisco school board was under attack from one side for having failed to implement one of its integration-through-busing school complexes, it was under attack from the other side for having implemented the one it had. It was of course the first of the two attacks that was supported by the district judge.

It is not this kind of action-to-integrate—undertaken by elected school boards, or by school boards appointed by elected officials, for educational or political reasons—that is under discussion here. Unless a political decision is clearly unconstitutional it should stand. Indeed, it is very likely that decisions to achieve racial balance taken by school boards not under judicial or federal order but because the political forces in that district demand it, have better effects than those undertaken under court order by resentful school administrations. In the first case, the methods of reducing racial imbalance have been worked out through the processes of political give-and-take, the community and teachers and administrators have been prepared for the change by the political process, the parents who oppose it have lost in what they themselves consider a fair fight. The characteristics of judge-imposed decisions are quite different.

III

There is, then, considerable room for doubt as to whether the Constitution actually mandates a system whereby every school shall have a black minority and no school shall have a black majority. Nevertheless present-day judges, with whom the doctrine of judicial restraint is not especially popular, seem able to find constitutional warrant for whatever policies they feel are best for the society. And so we come to the other crucial questions raised by the new line of cases: Is school desegregation the only way to improve the education of black children and/or the relations between the races?

Without rehearsing the terrible facts in detail, we know that blacks finish high school in the North three or more years behind whites in achievement. We also know with fair confidence that this huge gap is not caused by differential expenditures of money. Just about as much is spent on predominantly black schools outside the South as on predominantly white ones. Classes in black schools will often be smaller than classes in white ones—because the black schools tend to be located in old areas with many school buildings, while white schools tend to be in newer areas with fewer and more crowded school buildings. Blacks will often have more professional personnel assigned, owing to various federal and other programs. There are, to be sure, lower teacher salaries in the predominantly black schools, because they usually have younger teachers with less seniority and fewer degrees. Anyone who believes this is a serious disadvantage for a teacher has a faith in experience and degrees which is justified by no known evidence. (It is quite true that the big cities spend much less on their schools, white and black, than the surrounding suburban areas, which are almost entirely white. Regardless of the fact that spending more is unlikely to do much to improve education—it tends mostly to improve teachers' salaries and fringe benefits—it is quite unconscionable that more public money should be spent on the education of those from prosperous backgrounds than on those from poorer families. But this is quite separate from the issue of whether within present school districts less is spent on the education of black children, and whether spending more would reduce the gap in achievement.)

If money is not the decisive element in the gap between white and black, what is? In 1966 the Coleman report on *Equality of Educational Opportunity* reviewed the achieveemnt of hundreds of thousands of American school children, black and white, and related it to social and economic background, to various factors within the schools, and to integration. In 1967, another study *Racial Isolation in the Public Schools*, analyzed the effects of compensatory-education programs and reviewed the data on integration. Both studies—as well as subsequent experience and research—suggested that if anything could be counted on to affect the education of black children, it was integration. However, the operative element was not race but social class. The conclusion of the Coleman report still seems the best statement of the case.

"The apparent beneficial effect of a student body with a high proportion of white stu-

dents comes not from racial composition per se, but from the better educational background and higher educational aspirations that are, on the average, found among white students."

On the other hand, if such integration did have an effect, it was not very great. The most intense reanalysis of Coleman's data[3] concludes:

"Our findings on the school racial composition issue, then, are mixed. . . . the initial *Equality of Educational Opportunity* survey overstressed the impact of school social class. . . . When the issue is probed at grade 6, a small independent effect of schools' racial composition appeared, but its significance for educational policy seems slight."

The study of these issues has reached a Talmudic complexity. The finding that integration of different socioeconomic groups favors the achievement of lower socioeconomic groups apparently stands up, but the effect is not large. One thing, however, does seem clear: integrating the hapless and generally lower-income whites of the central city with lower-income blacks, particularly under conditions of resentment and conflict, as in San Francisco, is likely to achieve nothing, in educational terms.

In San Francisco, the number of children enrolled in elementary schools dropped 6,519 against a projected drop of 1,508 (a 13 percent decline against a projected 3 percent decline) in response to Judge Weigel's decision. The junior-high-school enrollment, not yet subjected to full-scale busing, declined only 1 percent, and high-school enrollment remained the same. In Pasadena, California, there was a 22 percent drop in the number of white students in the school system between 1969—before court-imposed busing—and 1971. In Norfolk, Virginia, court-imposed busing brought a drop of 20 percent. If, as seems probable, it is the somewhat better-off and more mobile who leave the public-school system when busing is imposed, the effect on the achievement of black children is further reduced.

It is in response to such facts as these and in the light of such findings as Coleman's that judges in Detroit and Indianapolis and elsewhere now call for combining the central city and the suburb into unified school districts. But if this elaborate reorganization of the schools is being undertaken so that the presumed achievement-raising effect of socioeconomic integration may occur, we are likely to be cruelly disappointed. There is little if any encouragement to be derived from studies, published and unpublished, of voluntary busing programs even though such busing takes place under the most favorable circumstances (with motivated volunteers, from motivated families, and with schools acting freely and enthusiastically). Indeed, much integration through transportation has been so disappointing in terms of raising achievement that it may well lead to a revaluation of the earlier research whose somewhat tenuous results raised what begin to look like false hopes as to the educational effects of socioeconomic integration.

IV

There is yet a final argument. One will hear it in Berkeley, which underwent full desegregation by busing three years ago, and which has seen no particular reduction of the white-black achievement gap. The argument is that school integration will improve relations between the races and that in view of the extremity of interracial tensions in this country, anything that improves these relations must be done. In Berkeley, a liberal community with an elected school board which voluntarily introduced transportation for racial balance and was not turned out for doing so, one can perhaps make this argument. But race relations are not ideal even in Berkeley, as Senator Mondale's committee discovered last year when it conducted hearings there on the most successful American case of racial balance through transportation.

The Mondale committee discovered, for example, that after the schools were fully integrated, a special program for blacks—Black House—was established at the high-school level from which non-black students and teachers were excluded. (Berkeley High School, the only one in the city, has always been integrated.) The committee discovered, when it spoke to students—selected, one assumes, by the school authorities because they would give the best picture of integration—that students of different groups had little to do with one another. The black president of the senior class said: ". . . the only true existence of integration of Berkeley High is in the hallways when the bell rang everybody, you know, pass [sic] through the hallways, that is the only time I see true integration in Berkeley High." Senator Brooke probed deeper. Since the young man was black and a majority of his classmates were white, had they not voted for him? "The whites didn't even participate in voting . . . They felt the student government was a farce." (The opposing candidate was also black.) What about social activities? "Like we have dances, if there is a good turnout you see two or three whites at the dances . . ." Intramural sports? "The basketball team is pretty integrated, the crew team is mainly white, soccer team mainly white, tennis team mainly white." Did this mean, Senator Brooke asked, "that blacks don't go out for these teams that are whites and whites don't go out for those teams that are all black?" The class president guessed that "whites like to play tennis and blacks like to play basketball better." Still, he did think integration was a good idea, as did a Japanese girl who told the Senators: "I think like the Asian kids at Berkeley High go around with Asian kids."

A Chicano student testified:

"I thing the integration plan is working, started to work in junior high, it is different levels, the sixth graders go up to seventh grade now. I think now the Chicanos and blacks, they do hang around in groups. Usually some don't. I admit, like I myself hang around with all Chicanos but I am not prejudiced. I do it because I grew up with them, because they were my school buddies when there were segregated schools."

A black girl in elementary school said: "About integration, I don't think it is too integrated, but it is pretty well integrated. I have a lot of white friends. . . ." She lives in an integrated neighborhood. A white girl from the high school testified:

"Integration, ideally, as far as I can see it isn't working. I mean like as far as everybody doing things together . . . I have one class where there are only two whites in it, I being one of them, you know, like I don't have any problems there, but outside . . . [with other blacks] we just do different things. I am not interested in games. I couldn't care less. I don't know anything about Berkeley as far as the athletics go. . . . I wear very short skirts and walking down the halls I get hassled enough by all the black Dukes, you know. . . ."

Senator Brooke was surprised she wasn't hassled by the white boys too and suggested that they might use a different technique.

This is about the most positive report one can make on schcol integration. Why should anyone be surprised? There is a good deal of hanging around in groups, and there is some contact across racial lines, but the groups seem to have different interests and different social styles. The younger children have more in common than the older ones. It would be hard to say whether this commonality of interest will continue through high school—a popular Berkeley theory—or whether differences will assert themselves as the children grow older even though they were exposed to integration earlier than those now in high school. In other communities which have been studied, black children who are bused tend to become more anti-white than those who are not bused. One can think of a number of reasons for this.

If, then, the judges are moving toward a forcible reorganization of American education because they believe this will improve relations between the races, they are acting neither on evidence nor on experience but on faith. And in so acting on faith they are pushing against many legitimate interests: the interest in using tax money for education rather than transportation; the interest of the working and lower-middle classes in attending schools near their homes; the interest of all groups, including black groups, in developing some measure of control over the institutions which affect their lives; the interest of all people in retaining freedom of choice wherever this is possible.

There is unfortunately a widespread feeling, strong among liberals who have fought so long against the evil of racial segregation, that to stop now—before busing and expanded school districts are imposed on every city in the country—would be to betray the struggle for an integrated society. They are quite wrong. They have been misled by the professionals and specialists—in this instance, the government officials, the civil-rights lawyers, and the judges—as to what integration truly demands, and how it is coming about. Professionals and specialists inevitably overreach themselves, and there is no exception here.

It would be a terrible error to consider opposition to the recent judicial decisions on school integration as a betrayal of the promise of *Brown*. The promise of *Brown* is being realized. Black children may not be denied admittance to any school on account of their race (except for the cases in which courts and federal officials insist that they are to be denied admittance to schools with a black majority simply because they are black). The school systems of the South are desegregated. But more than that, integration in general has made enormous advances since 1954. It has been advanced by the hundreds of thousands of blacks in Northern and Western colleges. It has been advanced by the hundreds of thousands of blacks who have moved into professional and white-collar jobs in government, in the universities, in the school systems, in business. It has been advanced by the steady rise in black income which offers many blacks the opportunity to live in integrated areas. Most significantly, it has been advanced because millions of blacks now vote—in the South as well as the North—and because hundreds of blacks have been elected to school committees, city councils, state legislature, the Congress. This is what is creating an integrated society in the United States.

We are far from this necessary and desirable goal. It would be a tragedy if the progress we made in achieving integration in the 1960's were not continued through the 70's. We can now foresee within a reasonable time the closing of many gaps between white and black. But I doubt that mandatory transportation of schoolchildren for integration will advance this process.

For, so far as the schools in particular are concerned, the increase in black political power means that blacks—like all other groups—can now negotiate, on the basis of their own power, and to the extent of their own power, over what kind of school systems should exist, and involving what measure of transportation and racial balance. In the varied settings of American life there will be many different answers to these questions. What Berkeley has done is not what New York City has done, and there is no reason

Footnotes at end of article.

why it should be. But everywhere black political power is present and contributing to the development of solutions.

There is a third path for liberals now agonized between the steady imposition of racial and ethnic group quotas on every school in the country—a path of pointlessly expensive and destructive homogenization—and surrender to the South. It is a perfectly sound American path, one which assumes that groups are different and will have their own interests and orientations, but which insists that no one be penalized because of group membership, and that a common base of experience be demanded of all Americans. It is the path that made possible the growth of the parochial schools, not as a challenge to a common American society, but as one variant within it. It is a path that, to my mind, legitimizes such developments as community control of schools and educational vouchers permitting the free choice of schools. There are as many problems in working out the details of this path as of the other two, but it has one thing to commend it as against the other two: it expands individual freedom, rather than restricts it.

One understands that the Constitution sets limits to the process of negotiation and bargaining even in a multi-racial and multi-ethnic setting. But the judges have gone far beyond what the Constitution can reasonably be thought to allow or require in the operation of this complex process. The judges should now stand back, and allow the forces of political democracy in a pluralist society to do their proper work.

FOOTNOTES

[1] In *Inequality in Education*, Center for Law and Education, Harvard University, Aug. 3, 1971.

[2] *Federal Civil Rights Enforcement Effort*, 1970, p. 14.

[3] David K. Cohen, Thomas F. Pettigrew, and Robert S. Riley "Race and the Outcomes of Schooling," in Frederick Mosteller and Daniel P. Moynihan, eds., *On Equality of Educational Opportunity*, Random House, 546 pp., $15.00.

SCHOOL INTEGRATION AND LIBERAL OPINION

(By Norman Podhoretz)

If Nathan Glazer is right—and I find his arguments entirely convincing—no benefit will accrue to anyone, whether white or black, from the requirement now apparently being established by the courts that no American public school shall have a black majority and that the student population of every school shall be racially balanced as far as possible in accordance with a specific mix. It used to be thought that the academic performance of black children would improve in integrated schools, but there is, as Mr. Glazer demonstrates, no evidence to confirm this idea. What the evidence actually suggests is that integration has little or no effect on academic performance, neither helping the blacks, as so many had hoped, nor hurting the whites, as so many had feared.

It also used to be thought that relations between the races would improve as a result of school integration, but here the evidence is if anything less encouraging than in the case of academic performance. I myself attended integrated schools as a child, and nearly ten years ago, I attempted in an essay called "My Negro Problem—and Ours" to show that such schools bore not the slightest resemblance to the rosy fantasies being scattered about in those days by the prevailing winds of liberal opinion. Liberal opinion said that sending white children and black children to school together would lead to greater mutual understanding and respect; I said that in my own experience it had led to violence and greater animosity. The studies Mr. Glazer cites of integrated schools of more recent vintage tend to prove that the experience of the integrated schools of the 30's and 40's was a more reliable guide to the future than the generous expectations of liberal opinion. At best relations between the races continue to remain cool in integrated schools, and often enough they are exacerbated to an intolerable, and to me altoghter familiar, degree.

If, then, no good is likely to come of it, why should we persist in forcibly integrating the schools? The question becomes even more difficult to answer when we consider how vast, even among liberals and even among blacks, the opposition has grown to the measures which must now be adopted if school integration is to proceed—measures which have found their definitive political summation in the great symbol of busing. In effect the country is being ordered against its own wishes to undergo a major reorganization without being given a reasonable assurance that some good will thereby be served, either immediate or ultimate, short-run or long. But if it is all to be for nothing, and if no one wants to do it, why should it be done at all?

Because, answer the activists and the bureaucrats and the lawyers and the judges, it is the law and the law must be obeyed. And indeed they are right, the law must be obeyed—if indeed it *is* the law that racial concentrations in the schools may not exist even if they arise from causes other than legal measures designed to bring them about. We already know for certain that legally sanctioned (or *"de jure"*) segregation of any kind, overt or covert, in the schools and out, is against the law of the land. No one any longer questions this, not even in the South. But until the Supreme Court settles the issues involved in busing and redistricting, we will not know for certain whether *"de facto"* separation in the schools is also against the law of the land. And even then, if the Supreme Court should declare that it is, given the huge numbers of people who do not agree, redress from what they may decide is judicial tyranny parading as constitutional warrant is likely to be sought in legislative action and perhaps in constitutional amendment.

Hopefully it will never come to that. Hopefully in the end the country will avert the major constitutional crisis which seems to threaten it now. Hopefully good sense will prevail—the good sense which leads so many people, often uneasily because they are liberals and well-intentioned and influenced by an irrational dogma, to wonder nevertheless why a specified racial balance must be imposed on the schools at such great cost in money and bitterness and anxiety when the strongest of probabilities is that doing so will neither overcome educational deficiency nor enhance the relations of the races.

EXHIBIT 3

[United States District Court, Northern District of Georgia, Atlanta Division]

Vivian Calhoun, et al., Plaintiffs v. *Ed. S. Cook, et al.*, Defendants.

This case is on remand from the Fifth Circuit with directions to require implementation of a pupil assignment plan in compliance with the principles of *Swann* v. *Charlotte-Mecklenburg Board of Education*. Specifically, it directs only two changes: (1) The provision for majority-to-minority transfer with transportation and space being guaranteed under the option and (2) The filing of semi-annual reports. After hearing on remand the court finds the following:

This case is now in its thirteenth year before this court, having been filed in 1958, Atlanta in 1961–62 was one of the first major southern cities officially abandoning the dual school system. In its court experience, the original desegregation order was one of the few unappealed and assented to. Periodically as each new specific to *Brown* v. *Topeka* was belatedly developed by the higher courts, the School Board has been returned to court and given new directions under such landmark cases as Jefferson, Green, Singleton, Montgomery County, and Orange County. Each has been accepted and promptly implemented. In the interim, the system voluntarily accelerated from the early concept of grade-by-grade annual integration to system-wide integration; it voluntarily and studiously located new schools and rezoned so as to maximize integration; it voluntarily liberalized its pupil-transfer plan; and in various ways increased responsibility for its black teaching personnel, principals, and area superintendents. Through court order, it has advanced from the initial requirement of two teachers of opposite race to each school to a computerized mathematical distribution of its faculty by race throughout the city; and from historical and traditional attendance zones to a court-supervised optimum Orange County plan. No one has successfully challenged the good faith of its elected Board of Education, the appointed Superintendent, Dr. John W. Letson, or of its administrative personnel throughout this uncertain decade. Its efforts were early described as "commendable" by the Supreme Court. Each change has produced convulsive implosions within the system and what has now become the annual agony of Atlanta has caused significant change in the character of the system, both physically and psychologically.

When this suit began, Atlanta had a pupil ratio of 70 per cent white and 30 per cent black and a predominantly white faculty; today, its racial complexion has reversed to 70 per cent black and 30 per cent white and its 4,800 teachers are 60 per cent black and 40 per cent white. From an enrollment of 115,000 students it has dropped to 100,000 in the school year 1970–71, during which it lost 7,000 whites and gained 1,000 blacks. The system itself covers an area approximately 16 miles long and 14 miles wide lying in Fulton and a portion of DeKalb counties. The Atlanta City School System is a so-called "independent system" in that it is separately organized and operated from the county systems, each receiving direct grants from the state, supplemented by local tax funds. It is one of the 31 remaining independent city systems within the state. As such, it receives no state funds for transportation. It has never transported students, owns no buses, and there is no school "busing" available. Based on information furnished by each principal as to location and times, the private Atlanta Transit System arranges routes to accommodate students at reduced fare provided by each student individually. The system presently maintains 123 elementary-primary schools and 29 secondary schools, with two units to be opened this coming year.

The white students remaining are concentrated at the extreme northern and southern ends of the district, while the vast middle is a broad belt of industry and high-density solid black housing. The line between these areas is steadily creeping towards the ends with increased black housing and diminished white housing. Since 1961, it has annually achieved substantial temporary integration by the establishment or construction of "line schools." However, 34 of those schools have gone from all-white to 90 per cent or more black during the period. This "tipping process" is so rapid that it sometimes occurs by the time a facility deliberately located to increase integration can be completed and occupied. Seldom does it last longer than two years. Since official desegregation in 1961, 24 new schools have been constructed, several of which have been especially built to serve federal housing developments in the inner city. Others were appropriated for such purposes. In spite of official laws and directives

to the contrary, the bulk of such developments have been operated as all-black since inception. As a natural consequence, 29 schools provided for such "controlled situations" are substantially black. Enforcement of fair housing legislation under Jones v. Alfred H. Mayer Co., and Title VIII of the Civil Rights Act of 1968 will automatically integrate these zones.

The cause of such frustrating results lies in factors completely beyond the control of school authorities. Segregated housing, whether impelled by school changes or not, remains the unconquerable foe of the racial ideal of integrated public schools in the cities. The white flight to the suburbs and private schools continues. As far back as 1957, in an offshoot of this case involving the proposed construction of an all-black school in the heart of the black belt, the problem was accurately characterized by plaintiffs witnesses and the court as de facto rather than de jure. Griggs v. Cook. The problem is no longer how to achieve integration, but how to prevent resegregation. Only last year, the parties and Judge Hooper for this court exhaustingly investigated possible remedies for over seven weeks of tidal, culminating in the orders involved in this appeal and remand. Some of the fruits of those "best efforts" have already slightly soured in the face of evolutional de facto changes. Through it all, the Atlanta system has maintained a traditional position of leadership in the public schools. It remains at the top of the state in pay scale, curriculum development, and innovative efforts in quality education.

HISTORY

In this litigation, the longtime standard of measurement has been the classification of schools in excess of 9 pct-10 pct enrollment by race as "integrated". Presently, 33 elementary schools and 13 secondary schools meet this test in that they have integration in excess of 10 pct. (many at 50–60) of the minority race at such schools. Of the remainder of 101, all but 45 have either completely resegregated, serve special controlled housing situations, or have been built since official desegregation as previously discussed. Of some 46 schools in neither category, the information furnished the court reveals substantially the following.

24 have integration of less than 10 pct. (ranging from 1 pct-7 pct black and 1 pct-5 pct white);

7 have only token integration (less than 10 students of the opposite race, ranging from 1–4 blacks and 3–9 whites;

15 are either all-black or all-white.

The closest schools with a majority of the opposite race are located as follows:

THE PRESENT SITUATION

Less than ¾ mile—1
¾ mile to 1½ miles—5
1½ miles to 2 miles—11
2 miles to 8½ miles—29

These distances are calculated in straight lines without regard to traffic patterns, transportation barriers, etc. In many instances, there is an intervening interstate highway, railroad, or similar artificial barrier.

Last year, 1140 students took advantage of the unlimited transfer option in effect. (Under the old freedom-of-choice provisions, an unusually large number of blacks by-passed closer white and black schools to attend a "prestige" black school; and white students by-passed closer white and Negro schools to attend a "prestige" white school.) There is, in fact, no serious problem of overcrowding at any facility. Annual zone changes and excellent modern portable classrooms are used to take care of increasing enrollments in either white or black schools. There are, proportionately, as many vacant classrooms at black schools as at white. The court is convinced that no device of packing is being used to preserve segregation. To the contrary, crowding at one school has been used to increase integration at another school. The Board assures the court there will be no problem of overcrowding at any school during 1971–72.

When the remand issued, the Board promptly agreed to the specifics required therein by formulating plans with the Atlanta Transit System to afford transportation by direct grants to the students taking advantage of the majority-to-minority transfer option. Prior thereto and following the issuance of Swann, it formed administrative task forces to study the possibilities of increasing integration by pairing, rezoning again, etc. All of those efforts have been reviewed by the court and representatives of the plaintiffs. Pairing or additional zone changes along the line either produce substantial hardship and * * * increases in travel time for the children involved or seriously imperils existing integration at one of the schools involved. In either event, the end result at best would accomplish only a temporary change soon to be wiped out in the historical pattern already established.

With the exception of an innovation in the transfer system, no single measure appears hopeful under the circumstances. There is evidence in the prior record that Atlanta has encouraged maximum majority-to-minority transfers on an individual basis. The court reasons that if such transfers could be effected on a bus-load basis, the prospects can be enhanced. The Atlanta Transit System is in dire straits itself. However, it has agreed to allow the Board to utilize the same total number of busses previously employed on an individual pick-up route basis for "group transfers." Thus, if a bus-load group of students in one area opt for a transfer to a particular school of the opposite race in another area, they can be transported at the same time in the same bus rather than individually along with the general public. The attached order so provides.

Additionally, the Board has agreed to make special efforts in the black area to encourage such group transfers through its area superintendents and other personnel stationed there. Already, it has given wide-publicity to the new transfer option through local newspapers, television, and radio. Over 100,000 bulletins have been placed in the neighborhood schools and a teacher is on duty to explain the plan to all interested parties. A central information center with a publicized telephone number has been established to impart the details to anyone inquiring. Each pupil may readily apply for the new transfer at the school he last attended on a quarterly basis on or before two days before the quarter opening.

CONCLUSIONS

Other than the above, it is apparent that the only device which could effect any significant change is mass-busing in an endeavor to achieve a 30 pct-70 pct ratio throughout the system. As seen, distances alone would require 40 minutes or more for each child transported and all of this would have to be achieved by a system which has no buses, no drivers, and no funds with which to acquire and operate them. The pairing of noncontiguous attendance zones is, under urban circumstances where a half-mile for a school child is a long distance to walk, but another term for bussing. The court has considered the possibility of requiring the transportation of black students from the center to the white ends. This move is opposed by a large group of blacks except on a voluntary basis as described. On the facts alone, the court concludes that wholesale bussing is neither "reasonable, feasible, or workable."

Of paramount significance, however, is the obvious result. Atlanta now stands on the brink of becoming an all-black city. A fruit-basket turnover through bussing to create a 30 percent white-70 percent black uniformity throughout the system would unquestionably cause such a result in a few months time. Intelligent black and white leadership in the community realizes and fears it. Responsible citizens both in and out of the school system are deeply concerned with preservation of the biracial identity of the city. Without it, the ultimate goal of equality in all its aspects is doomed and Atlanta's position of leadership is severely threatened.

The Atlanta School Board is made up of ten members, three of whom are black. Its chairman is Dr. Benjamin Mays, a respected black educator and civil rights leader. The Board deems it unrealistic to go further than stated and unwise to do so. The Biracial Committee appointed by this court is composed of ten outstanding civil and business leaders, five of each race. Its chairman is Mr. Lyndon Wade, the black Executive Secretary of the Urban League. A majority of 9 of its members have furnished the court with a resolution praising the Board's efforts and recommending no further action. (The tenth member was out of the city for an extended absence.) Short of mass busing, the plaintiffs whose counsel and advisors have vast experience in such matters can offer no other alternatives. The Department of Health, Education and Welfare has long ago approved the present plans.

The remedy of mass busing under these circumstances is rejected. Nor is it deemed required under Swann. "An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."

The time and distance which would be involved is impractical, particularly for children in the primary and elementary grades. If the premise of Brown is correct and education in an all-black system is injurious, then certainly the results here would impinge the educational process for the children remaining. At least now there is complete integration administratively and substantial integration in pupil assignment. In a similar situation (Memphis), the Sixth Circuit in its post-Swann remand, indicated that the "extensive transportation of pupils to schools all over the city, regardless of distances involved in order to establish a fixed ratio in each school" is not required; and seemingly recommends that the trial court review all of those other devices already considered in Atlanta.

Swann holds that once de jure status is removed that a school district is not required to reintegrate continually due to de facto changes. "Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." On this basis, there is considerable merit to the position that this case ought to be dismissed forthwith. Atlanta's de jure status has long since been removed by Board action and by successive court decrees. Its present problems are entirely de facto. There is absolutely no evidence of any affirmative action by the board to increase segregation. To the contrary, all official action for many years has been to promote integregation. It appears to be a unitary system "within which no person is to be effectively excluded from any school because of race or color." On such basis, Atlanta is entitled to a dismissal

However, should Swann be considered as a starting point for such a goal, the present facts qualify. In essence, Swann holds that the essentials of any unitary system are the elimination of invidious racial distinctions in regard to (1) transportation, (2) faculty and supporting personnel, (3) extracurricular activities, (4) construction and site selection, and the presence of an (5) op-

tional majority-to-minority transfer provision. To the extent that they apply, Atlanta has had such essentials for some time. With this order, the payment of public transportation and space guarantee has been added to the transfer provision. On pupil assignment, the Court, sitting in equity, may utilize any number of devices to achieve a "realistic and workable" plan for the district. All of the devices named, with the exception of mass busing, have been considered by the Board and the Court and optimum results obtained. Insofar as one-race schools are concerned, the Board has satisfied its burden of showing that "their racial composition is not the result of present or past discriminatory action on their part."

As seen, on a school-by-school basis there is existing integration of some kind or there is a purely de facto situation occurring since official desegregation in all but 15 all-black or all-white schools, or less than 10 pct. of the total facilities in operation. Accordingly, upon implementation of the attached order, the system will be judicially declared unitary and a dismissal will be directed on January 1, 1972, the court retaining the inherent jurisdiction to deal with future problems. (In this respect, it should be made clear that for the present, the Singleton-type faculty assignment ordered by the court on March 20, 1970, calls for an annual adjustment. See Carter v. West Feliciana Parish School Board, 432 F. 2d 875 (5th Cir. 1970). Implicit in the attached order is the admonition that it be so administered until further direction is received.) But, in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

COMMENT

Looking ahead, the court is compelled to note that the critical point for public education in the City of Atlanta and its environs has been reached. The situation calls for a sweeping examination of its relationship to housing, planning, finances, rapid transit and all the other external factors which vitally affect its role in the community. Apparently, no serious effort has been expended on the question of consolidation of the Atlanta system with the Fulton County system. In terms of efficiency, taxes and quality education, such consolidation normally produce long-range improvements. In terms of the current problem, such consolidation might well produce partial, even though not perfect solutions. Certainly for many reasons connected and unconnected with this case, this one aspect ought to be studied without delay. In any such investigation, the proper vehicle should be community-wide, crossing lines of industry, government, and transportation as well as education. While the School Board should certainly participate, it cannot function successfully alone. A special Mayor's Committee of both races might be appropriate. The existing Biracial Committee might well be expanded to 20–30 members to undertake such a task. If so, the court would gladly entertain a motion by any party or the committee itself to add sufficient members to represent the other community aspects involved. Short of such critical reevaluation, the Atlanta system faces a difficult task in merely "hanging on" to its present position, awaiting the uncertain reversal of white flight from its limits.

It is so ordered.

This the 28 day of July, 1971.

SIDNEY O. SMITH, Jr.,
U.S. District Judge.

ALBERT J. HENDERSON, Jr.,
U.S. District Judge

TEXT OF THE COURT ORDER

[United States District Court, Northern District of Georgia, Atlanta Division]

Vivian Calhoun, et al., Plaintiffs vs. Ed S. Cook, et al., Defendants.

Upon consideration of this case under the remand of the Fifth Circuit, the defendant is ordered and directed as follows:

1. To abide by the previous decrees of this court regarding faculty and pupil assignment in the Atlanta public schools and specifically the orders of February 9, 1970; March 20, 1970; and August 31, 1970.

2. To provide for majority-to-minority transfers by application at the school last attended or at the central office each quarter of the school year at any time on or before the second day prior to the beginning of each quarter with space to be guaranteed each applicant at the school of his choice.

3. To provide for transportation for majority-to-minority transfers on the following basis:

(a) Where a sufficient number of students from a given community, zone, or point of origin will be traveling to a single destination, transportation will be provided by direct-billing contract with the Atlanta Transit System or some other carrier.

(b) Where the number of children moving to a given destination school is smaller than a bus load, transportation will be provided in the form of special bus tokens, distributed directly to the pupil involved on a weekly basis, to be used on regular Atlanta Transit System routes.

4. To furnish to the court and to the Biracial Committee through its chairman, reports on at least a semi-annual basis by October 1st and February 1st of each year containing the date set out in Appendix "B" of the district court order approved in United States v. Hindus County School Board, 433 F. 2d 611 (5th Cir. 1970). If such data is presently available in the existing monthly-quarterly reports published, such reports may be furnished in lieu of a special report.

5. To consult with the Biracial Committee, in its advisory capacity, in the areas of the promulgation and maintenance of school zone lines, in the selection of sites for new schools, in student transfer and sehool transportation policies, together with such additional matters as may be assigned to the Biracial Committee by the School Board for consultation and advice.

To the extent stated herein, relief is granted; otherwise, it is denied. The motion by plaintiffs to hire a professional consultant at the expense of defendant is rejected. Considering the experience of the parties and the court in these matters, and the obvious factual situation, such expense is deemed unnecessary. Moreover, such action would delay these proceedings several more weeks up to the projected opening of school.

It is so ordered.

This the 28th day of July, 1971.

SIDNEY O. SMITH, Jr.,
U.S. District Judge.

ALBERT J. HENDERSON, Jr.,
U.S. District Judge.

Mr. GAMBRELL. Mr. President, President Nixon recently held a meeting at the White House with several Members of Congress concerning the question of forced busing. After the meeting, President Nixon announced his opposition to forced busing, but offered no plan to put a stop to this outrageous practice. Instead, the President appointed a Cabinet committee to inquire into the matter.

Several days after this meeting, I was consulted by representatives of the Cabinet committee, and after a lengthy discussion, I proposed to them a four-point plan for dealing rapidly with the busing crisis.

As yet, President Nixon has not announced any plan on this subject. The issue is to be voted on today and the time for action has arrived.

For the third time, since September of last year, I call upon the President to act decisively. I repeat the four-point plan which I suggested to his representatives last week.

They are as follows:

First. That there be an immediate legislative roll-back moratorium on forced school busing for integration purposes. This means that until a permanent solution to the matter can be arrived at there would be no more busing required by Federal courts or the Department of HEW, that busing heretofore required would be terminated, and that this would be accomplished through legislation rather than by waiting for this to be done through executive or judicial action.

Second. That the President, through the Justice Department, seek a prompt and comprehensive judicial determination of the constitutional issues involved in the busing controversy.

Third. That immediate congressional consideration be given to a permanent constitutional and legislative solution which will preserve community public schools, free of racial discrimination.

Fourth. That any Federal desegregation remedies hereafter adopted shall be uniformly applied in all regions of the country.

Mr. President, the so-called Griffin amendment furnishes an opportunity to proceed in accordance with this four-point plan. I, therefore, urge the President to give an endorsement to the Griffin amendment and that the Senate act favorably on that amendment when the opportunity for voting arises at 12 o'clock today.

By Mr. MOSS (for himself, Mr. ALLOTT, Mr. DOMINICK, and Mr. FANNIN):

S. 3436. A bill to amend the Soil Conservation and Domestic Allotment Act, as amended, to provide for a Four Corners area program. Referred to the Committee on Agriculture and Forestry.

LAND POLLUTION IN FOUR CORNERS STATES

Mr. MOSS. Mr. President, I am today introducing, for myself and Senator FANNIN, a bill designed to curb land pollution in the Four Corners States—that is the States of Utah, Colorado, New Mexico, and Arizona.

The bill is patterned after the program which has been in successful operation in the Great Plains States for a number of years. It would authorize the Secretary of Agriculture to enter into cost-sharing contracts with individual land owners and operators to adopt cropping and range management systems, and to install soil and water conservation measures which would help prevent erosion, reduce sediment and salinity in streams and ponds, and control other pollutants, including animal wastes.

All lands under cultivation would be eligible for contract, including Indian lands. The Federal share could be up to 90 percent of the total cost. The technical services of the Soil Conservation Service would be utilized in effectuating the program.

A companion bill is being introduced in the House of Representatives today by Congressman WAYNE ASPINALL of Colorado, with a number of cosponsors from the Four Corners States.

By Mr. PEARSON:

S. 3437. A bill to authorize the Secretary of Housing and Urban Development to provide assistance to State and local governments to encourage the repair and improvement of substandard housing. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. PEARSON. Mr. President, millions of Americans live in substandard housing. Almost 5 million American homes lack plumbing facilities, others have deficient roofs, unsafe wiring, or other unsatisfactory conditions. While many believe these homes are only in urban slums, they are not. Over 3 million of a total of 4.7 million substandard housing units are in rural America.

While Federal, State, and local governments have programs designed to encourage home improvements, the property tax structure in our States discourages many homeowners from repairing and renovating their homes. If an individual improves his home, he is faced with the fact that property taxes will increase. For many poor families, this increase in the already burdensome property tax added to the cost of home repairs puts badly needed home improvements out of reach.

The bill I introduce today would alleviate this added property tax burden and enable many Americans to improve their homes.

The legislation would provide the Secretary of HUD the authority to give assistance to State and local governments which agreed to forgo, for a time, increased property taxes on homes which are improved to meet criteria established for standard housing. This does not require the State and local governments to pay any money, it merely asks that they forgo tax increases based on the home improvements for a period not to exceed 10 years.

The Federal Government would agree to pay 75 percent of the increased assessed value of the home resulting from improvements which raise the structure from below standard to standard as defined by the Secretary of the Department of Housing and Urban Development. The Secretary would be empowered to establish such regulations as necessary to insure that the Federal Government pays for only those improvements which raise housing from below standard to the standard level.

This bill will provide no bonanza for unscrupulous slumlords, it simply removes a barrier to the improvement of homes, many of which are owned by poor families in rural areas of our Nation. It does so without undue burden on the local, State, or Federal Government. The Library of Congress has estimated the initial Federal subsidies would be approximately $8 million. While this is not a large sum for a government, on an individual homeowner basis, it has been a formidable obstacle to home improvements.

Mr. President, we are working on a number of ways to lower property taxes. Through this bill, we can alleviate one of the most undesirable effects of the property tax, and do so for a relatively small sum.

Every family in America should have a decent home. This bill will remove a barrier to improved housing throughout the United States.

By Mr. STEVENS:

S. 3438. A bill to amend section 607(k)(8) of the Merchant Marine Act, 1936, as amended. Referred to the Committee on Commerce.

Mr. STEVENS. Mr. President, today I introduce a bill amending portions of the Merchant Marine Act, 1970.

The purpose of the bill is to clarify an ambiguity which could have the unfortunate effect of denying the citizens of Alaska the full benefit of certain provisions of the Merchant Marine Act, 1970. As Senators will recall, in the 91st Congress we enacted a historic new maritime program to revitalize our merchant marine. The Merchant Marine Act, 1970, amended the Merchant Marine Act, 1936, to, among other things, extend the coverage of certain tax deferral privileges previously available only to one small segment of our fleet.

The act also recognized the unique dependence of the citizens of Alaska Hawaii, Puerto Rico, and the noncontigouous territories and possessions on marine transport, and provided tax incentives in order to effectively decrease the cost of building vessels for these trades, and thus the cost of marine transportation. This provision was intended to provide long overdue relief to the people of our noncontiguous States and territories. Unfortunately, the definition of "noncontiguous" trade in section 607(k)(8) is ambiguous with respect to whether incidental intrastate carriage between ports in Alaska would qualify for this benefit, even though it clearly provides that similar carriage between the islands of Hawaii does. Also, the privileges apply to similar carriage on the Great Lakes. Given the clear public policy of these provisions of the act, it seems to me that incidental intrastate carriage between ports in Alaska could be permitted by administrative interpretation. However, there has been an understandable reluctance to so interpret the literal words of section 607(k)(8), even though such an interpretation would be clearly consistent with the objectives of the act. Consequently, I am introducing this legislation to clarify the situation.

The bill would amend the Merchant Marine Act, 1936, in order to clarify the meaning of the term "noncontiguous trade", as it is used in section 607(k)(8), so that trade between points which are wholly within an offshore state or possession can qualify as a permissible trade in which to operate vessels which are built with capital construction funds. Enactment of this bill will enable offshore operators of vessels built with such funds to fully deploy these vessels in the most efficient manner without contravening the act.

Section 607(a) of the Merchant Marine Act, 1936, as amended by the Merchant Marine Act of 1970, allows a shipping company to establish a capital construction fund consisting primarily of tax-deferred earnings for the purpose of constructing or reconstructing "qualified vessels". In order to be considered "qualified", a vessel must be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States—Section 607(k)(2). If a vessel built or purchased with capital construction funds is operated outside one of the enumerated trades, substantial penalties would ensue.

"Noncontiguous trade" is presently defined in Section 607(k)(8) to mean:

"(i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade between Alaska, Hawaii, and Puerto Rico and such territories and possessions and (iii) trade between the islands of Hawaii.

As now structured, this definition of "noncontiguous trade" is susceptible to uncertainty regarding the status of ocean shipping wholly within Alaska, Puerto Rico, or the insular territories and possessions of the United States.

Although trade between the islands of Hawaii is clearly noncontiguous—clause (iii) of section 607(k)(8)—it is not altogether clear that trade between coastal points in Alaska, for instance, can similarly be regarded as "noncontiguous trade" as that term is presently defined. Alaska's singular reliance on water transportation and its need to obtain such transportation as economically as possible dictate that section 607(k)(8) be amended to explicitly include intra-Alaska coastal trade within the meaning of "noncontiguous trade."

For example, a few carriers—mostly tug and barge operators—serve the offshore domestic trade between the contiguous 48 States and Alaska. In the course of a voyage between, say, Seattle and Alaska, cargo may be carried to a number of Alaskan ports. In serving these ports, incidental cargoes may also be carried from one Alaskan port to another Alaskan port. From the carrier's point of view, the carriage of these incidental intrastate cargoes represents the most efficient use of its equipment. Although these cargoes are minor in volume compared to the major interstate trade, they are also very important to Alaska shippers since there is no regular privately owned service operating only between ports in Alaska. The interstate movement is clearly within the scope of section 607(k)(8), but the incidental intrastate movement is arguably outside the definition of "noncontiguous trade."

If this intrastate movement is not considered to be "noncontiguous trade," a carrier could not in good faith contract with the Secretary of Commerce for the

construction of vessels which would be regularly used in such a trade, albeit incidentally. If Alaskan operators, for example, were forced to abandon incidental intrastate carriage in order to benefit from the capital construction fund program, the intrastate shippers dependent on water transportation would obviously be injured; and since there would be an irreplaceable loss of freight from this movement, the interstate shipper might have to pay increased rates in order to offset the loss of intrastate revenue. The proposed amendment would relieve the carrier from having to choose between the benefits of the act and the efficient use of its equipment.

Another compelling reason for specifically including intra-Alaska—also intra-Puerto Rico, intra-Guam, and so forth—trade within the scope of the act arises from Congress inclusion of interisland Hawaiian trade—wholly intrastate—in the definition of "noncontiguous trade." It was apparently recognized that Hawaii's dependence on ocean shipping, even for intrastate movement, dictated that Hawaiian carriers, shippers, and consumers should benefit from the construction of water transport equipment with capital construction funds. The conditions which impelled Congress to extend the benefits of the act to the interisland Hawaiian trade are equally present in the case of Alaska and the insular territories. For instance, there are 6,640 miles of general coastline in Alaska and 33,904 miles of coastline if all of its islands are included.

There are more islands in Alaska than in any other State. Alaska and the insular territories are just as heavily dependent on water transportation as is Hawaii. The legislative history of the Merchant Marine Act of 1970 sheds no light on the omission of the intra-Alaska trade as opposed to the inclusion of the interisland Hawaiian trade. The failure to include Alaska and the other offshore territories and possessions may well have been a legislative oversight which should be corrected by the adoption of the proposed amendment. This amendment would assure Alaskan citizens the same treatment that the act confers upon Hawaiian citizens. The benefits of the act, in terms of better, more efficient, and more modern water transportation service in intrastate trade should accrue not only to Hawaii but to Alaska as well. At the same time, Puerto Rico and other insular territories and possessions of the United States should be accorded the same treatment.

A third and equally important reason is to encourage the growth of the boatbuilding trade in Alaska. With its wealth of natural materials, particularly timber, so close to so many potential customers, Alaska is a State particularly advantageously situated for the development of a boatbuilding industry. The largest accessible stands of good lumber are in southeastern Alaska, close to many potential customers. This bill will incidentally encourage the growth of the shipbulding industry in Alaska. Of course, it will also encourage the domestic Alaska shipping industry which is, as I have indicated, still, like Alaska shipyards, relatively small and in need of assistance.

The proposed amendment accomplishes the objectives set forth above. In addition, the wording of the amendment also encompasses the meaning of original clause (ii) to section 607(k)(8): "trade between Alaska, Hawaii, and Puerto Rico and such territories and possessions."

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

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

S. 3438

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 607(k)(8) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(k)(8)), is amended by striking that entire portion of Section 607(k)(8) which follows the lower case Roman numeral "(ii)", and inserting in lieu thereof, "trade from any point in Alaska, Hawaii, Puerto Rico and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico and such territories and possessions."

By Mr. STEVENSON:

S. 3439. A bill to authorize expenditures to correct or compensate for substantial defects in section 203(b) FHA mortgaged homes. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. STEVENSON. Mr. President, today I am introducing legislation to broaden the protection available to federally insured homebuyers who are the innocent victims of local HUD mismanagement and unscrupulous real estate brokers.

On Saturday, March 18, I had the opportunity to examine several homes in Chicago recently purchased with FHA mortgages. They were in a deteriorating condition, some with serious structural defects even though they were purchased following inspection by HUD within the past year.

According to HUD regulations, FHA appraisers may not approve a house for an FHA mortgage unless it meets HUD's minimum property standards.

From what I saw in Chicago, and the case histories I have received in my mail, it is apparent that these directives are being ignored in the administration of the FHA programs.

Some of the homeowners with whom I met are now entitled under the law to reimbursement for repairs of structural defects not ordered repaired by FHA inspectors. Yet, in cities like Chicago and New York, owners of homes like these have not received 1 cent under laws passed by Congress in 1970 to provide them with reimbursement for repairs. We must find out why HUD cannot properly administer its own programs, and I have today sent a letter to Secretary Romney raising this question.

But a great many homeowners who are the victims of inadequate HUD inspections and unscrupulous real estate brokers are not entitled to even this kind of reimbursement for repairs. Section 203(b) is HUD's basic unsubsidized insurance program for single family homes. Ninety percent of all HUD insurance has been written under the 203 program, yet purchases of existing 203 homes, 70 percent of all HUD transactions in Chicago last year, are not entitled to reimbursement for repairs of structural defects overlooked by FHA appraisers.

Such reimbursement rights now belong to owners of new federally insured housing as well as existing section 235 homes, HUD's interest subsidy program for low- and moderate-income families. Last month the Senate passed and sent to the House legislation extending this coverage to owners of 221(d)(2) housing, HUD's unsubsidized insurance program for low- and moderate-income families. The legislation I introduce today will amend section 518(b) of the National Housing Act to extend such benefits to the great number of purchasers of existing housing under HUD's section 203 mortgage program.

Prior to my Chicago visit, I did not realize how badly section 203(b) housing needed this coverage. Several of the recently purchased homes I saw were purchased with FHA section 203(b) mortgages. Those homeowners, victimized by FHA's faulty appraisal and inspection practices, have no legal recourse and must personally pay for FHA's mistakes. This legislation would provide section 203 purchasers who bought their homes within 2 years of the bill's final passage with reimbursement rights for repairs of structural defects in existence at the time the owner received his mortgage.

There is no simple answer to the housing crisis. But we must begin by giving all federally insured homebuyers the same opportunity for reimbursement for defects ignored by HUD's appraisers and in violation of its own minimum property standards.

Such relief for those who have already been wronged is a stopgap measure at best. The legislation which the Senate passed last month with regard to 221(d)(2) protection and the legislation I introduce today are needed because HUD is not administering its programs at the local level according to the law, but rather, to be charitable, in ignorance of it. That is a real problem, and the one to which this Congress should address itself.

By Mr. BUCKLEY (for himself, Mr. BOGGS, and Mr. JAVITS):

S. 3440. A bill to terminate the obligation of States to return funds deposited with them pursuant to the U.S. Deposit Fund Act of 1836. Referred to the Committee on Finance.

Mr. BUCKLEY. Mr. President, during the administration of President Jackson, an embarrassment of riches in the Federal Treasury resulted in the passage of the U.S. Deposit Fund Act of 1836, under which surplus funds existent at that time—$28.1 million—were distributed proportionately among the States then in the Union. There were no conditions pertaining to the use of these funds. The only proviso was that the moneys had to be returned to the Treasury on demand.

After 136 years, during which no money has been returned and none has been recalled, it would seem inappropriate to expect the States to repay. Al-

though New York and Delaware held these funds in trust until very recently, other States have long since spent or lost track of them.

I am, therefore, sending to the desk, for proper referral, a bill which would cancel the obligation of the States to return these funds to the Federal Treasury. This will formalize the status quo, and cleanup the books of the affected States.

By Mr. KENNEDY (for himself, Mr. CRANSTON, Mr. HUGHES, Mr. JAVITS, Mr. MONDALE, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENSON, Mr. WILLIAMS, Mr. EAGLETON, and Mr. PELL):

S. 3441. A bill to extend the traineeship program for professional public health personnel, and project grants for graduate training in public health under the Public Health Service Act. Referred to the Committee on Labor and Public Welfare.

PUBLIC HEALTH SERVICE TRAINING ACT OF 1972

Mr. KENNEDY. Mr. President, I am introducing legislation today to extend sections 306 and 309 of the Public Health Service Act, which provide stipends for graduate training in public health and grants to schools of public health.

One of the most important elements in providing for health resources in this country is the comprehensive graduate public health education conducted by the 17 schools of public health in 14 States and Puerto Rico. The graduate schools of public health constitutes the key source of comprehensively trained professional personnel for leadership in voluntary health agencies and in public health systems at the local, State, and Federal levels.

Public health evolved from the early combination of medical science and engineering for the control of environmental hazards to man's health. It has grown to embrace various facets of the biological, physical, and social sciences as community aspects of health problems have become more complex and demanding.

Public health now depends upon the skills and knowledge of members of several professions. The role of the graduate schools of public health today is to prepare individuals who will be concerned with health problems which lie outside the scope of any single discipline.

In the graduate schools of public health, one finds faculties, students, and special curriculums representative of the several disciplines and sciences relevant to the solution of State health problems. Not only are physicians, dentists, nurses, and other basically trained health professionals involved, but also engineers, economists, statisticians, administrators, lawyers, urban planners, and other experts representing the natural and social sciences.

As sources of comprehensively trained public health manpower, the graduate schools of public health are indispensable to the Nation. They provide an excellent mechanism for development of the brain power now urgently needed in devising and applying effective techniques for the prevention of disease and the provision of medical care for the population as a whole. The planning of satisfactory health services is difficult and changing circumstances call for a new kind of expert—an expert who can adapt well-established principles to local situations and an expert who has a spark of innovation—the capacity to find solutions to problems never before encountered. Such individuals are most likely to emerge from the motivated, young physicans—and advanced degree holders from other professions—who elect careers in public health and who obtain the comprehensive preparation provided by the graduate schools of public health.

Federal sharing in the cost of comprehensive public health training in university graduate schools of public health is essential because of their national character and function. Students in the 17 schools in 14 States are predominantly from out-of-State, the majority of them sponsored in part by the Federal Government. Only 25 percent of the graduates work in the States where they attended the school of public health. To the extent that the schools bear the cost of training federally sponsored students, such institutions are subsidizing training for Federal service. Nearly all of the graduates enter public service.

The impressive increases in enrollment in schools of public health in recent years are due not only to Federal funds for physical facilities and projects and formula grants for teaching, but also to the availability of public health traineeships providing tuition and living stipends to graduate students in public health. Despite growing interest in community aspects of medicine, there is evidence that relatively few would take graduate training for public health careers if traineeships were not available.

Only 25 percent of the 1,800 students currently holding traineeships would have enrolled without such financial assistance, according to a recent survey. An overwhelming proportion—97 percent—are preparing for public service, rather than the more remunerative private practice of medicine.

The typical student, requiring a traineeship for graduate public health education, is already heavily in debt for college and medical education, has a dependent family and foresees the relatively modest salaries in public and private health agencies.

Reduction in traineeship funds, or shift to loan arrangements, would halt the upward trend in enrollments made possible in recent years by expansion of classroom space in schools of public health.

Traineeships are indispensable to provide for well-trained public health professionals who shall increasingly play a critical role in the complex and evolving transformations of our health care system. I am recommending increased levels of authorizations to insure that qualified individuals may be provided public health traineeships to meet our increasing health care needs.

During the Eisenhower administration, Congress recognized the national contributions of the graduate schools of public health and the Federal responsibility to them. The Hill-Rhodes Act of 1958 was sponsored in the House by Congressman George M. Rhodes and cosponsored in the Senate by Senators Lister Hill, John F. Kennedy, Pat McNamara, Irving Ives, and JOHN SHERMAN COOPER. It passed both legislative branches unanimously and was signed into law by President Eisenhower. The Hill-Rhodes program, which has been continued with bipartisan congressional support, provides formula grants "for comprehensive professional training in accredited schools of public health"—giving "primary consideration to the number of federally sponsored students attending each school in the allocation of the funds." Under the formula, one-third of each annual appropriation is allocated equally among the schools; two-thirds is allocated in proportion to the number of federally sponsored students in the respective schools.

Hill-Rhodes funds have met less than one-sixth of the schools' total costs for teaching and basic operations. Hill-Rhodes grants have not kept pace with the increases in teaching costs and student enrollments, including the enrollment of federally sponsored students.

Nevertheless, this unrestricted Federal money for teaching purposes has been of tremendous assistance in: supplementing other funds for faculty salaries; providing seed money for new developments in the teaching program; filling gaps appearing unexpectedly in the teaching budget; and fully supporting some teaching activities otherwise impossible to conduct.

In return for the Federal investment, the results have indeed been remarkable in terms of gains made in public health in comparison to the decade prior to Hill-Rhodes funding. Some of the striking results include: An 82-percent increase in the number of students enrolled; a 59-percent increase in the number of graduate degrees awarded; 525 new faculty positions; a 300-percent increase in federally sponsored students; and an increase from 11 to 17 in the number of schools of public health.

Mr. President, it is imperative we maintain a strong Federal commitment to our schools of public health. They have been of key importance in providing our Nation with public health professionals. This bill authorizes continued support for training health professionals and in fostering creative techniques and approaches to public health programs.

I recognize the many valuable contributions of our schools of public health. I look forward to their dynamic leadership in providing personnel and programs to meet the many problems of our present health care system.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD at this point.

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

S. 3441

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

SEC. 1. That section 306(a) of the Public Health Service Act is amended to read as follows:

"SEC. 306. (a) There are authorized to be appropriated to cover the cost of traineeships

for graduate or specialized training in public health for physicians, engineers, nurses, sanitarians, and other professional health personnel, $16,000,000 for the fiscal year ending June 30, 1972; $18,000,000 for the fiscal year ending June 30, 1973; $22,000,000 for fiscal year ending June 30, 1974; $26,000,000 for the fiscal year ending June 30, 1975; $30,000,000 for the fiscal year ending June 30, 1976; $34,000,000 for the fiscal year ending June 30, 1977; and $38,000,000 for the fiscal year ending June 30, 1978."

SEC. 2. Section 309(a) of such Act is amended to read as follows:

"SEC. 309. (a) In order to enable the Secretary to make project grants to schools of public health, and to other public or nonprofit private institutions providing graduate or specialized training in public health, for the purpose of strengthening or expanding graduate or specialized public health training in such institutions, there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1972; $16,000,000 for the fiscal year ending June 30, 1973; $17,000,000 for the fiscal year ending June 30, 1974; $18,000,000 for the fiscal year ending June 30, 1975; $19,000,000 for the fiscal year ending June 30, 1976; $20,000,000 for the fiscal year ending June 30, 1977; and $22,000,000 for the fiscal year ending June 30, 1978."

SEC. 3. (a) Section 309(c) of such Act is amended to read as follows:

"(c) The Secretary shall make grants, to public and nonprofit schools of public health accredited by a body or bodies recognized by the Secretary, to provide assistance for—

"(1) comprehensive and multidisciplinary training in the field of public health; and

"(2) specialized consultive services and technical assistance in the field of public health."

(b) Section 309 of such Act is amended by adding at the end thereof the following new subsections:

"(d) The Secretary shall prescribe by regulation such terms and conditions as he deems necessary for the making of grants under subsection (c).

"(e) In awarding grants made under subsection (c), the Secretary shall give consideration to the relative number of students enrolled in such schools for an academic year. In computing the number of students so enrolled, the Secretary shall include part-time students on the basis of the number of credit hours being taken by part-time students in such program divided by the minimum number of credit hours any student would be required to take in an academic year to be classified as a full-time student.

"(f)(1) There are authorized to be appropriated for carrying out the purposes of subsection (c)(1), $15,000,000 for the fiscal year ending June 30, 1973; $17,500,000 for the fiscal year ending June 30, 1974; $20,000,000 for the fiscal year ending June 30, 1975; $22,500,000 for the fiscal year ending June 30, 1976; $25,000,000 for the fiscal year ending June 30, 1977; and $27,500,000 for the fiscal year ending June 30, 1978.

"(2) There are authorized to be appropriated for carrying out the purposes of subsection (c)(2) $6,000,000 for the fiscal year ending June 30, 1973; $7,000,000 for the fiscal year ending June 30, 1974; $8,000,000 for the fiscal year ending June 30, 1975; $9,000,000 for the fiscal year ending June 30, 1976; $10,000,000 for the fiscal year ending June 30, 1977; and $11,000,000 for the fiscal year ending June 30, 1978."

A SECTION-BY-SECTION ANALYSIS OF A BILL EXTENDING THE TRAINEESHIP PROGRAM FOR PROFESSIONAL PUBLIC HEALTH PERSONNEL, AND PROJECT GRANTS FOR GRADUATE TRAINING IN PUBLIC HEALTH UNDER THE PUBLIC HEALTH SERVICE ACT

Section 1 amends section 306 of the Public Health Service Act to re-authorize and extend traineeships for graduate and specialized training in public health for physicians, engineers, nurses, sanitarians, and other professional health personnel. For such grants, there are authorized to be appropriated $16 million for the fiscal year ending June 30, 1972; $18 million for the fiscal year ending June 30, 1973; $22 million for the fiscal year ending June 30, 1974; $26 million for the fiscal year ending June 30, 1975; $30 million for the fiscal year ending June 30, 1976; $34 million for the fiscal year ending June 30, 1977; and $38 million for the fiscal year ending June 30, 1978.

Section 2 amends section 309(a) of the Public Health Service Act to re-authorize and extend project grants to schools of public health and to other public and nonprofit private institutions providing graduate or specialized training in public health. For such grants, there are authorized to be appropriated $15 million for the fiscal year ending June 30, 1972; $16 million for the fiscal year ending June 30, 1973; $17 million for the fiscal year ending June 30, 1974; $18 million for the fiscal year ending June 30, 1975; $19 million for the fiscal year ending June 30, 1976; $20 million for the fiscal year ending June 30, 1977; and $21 million for the fiscal year ending June 30, 1978.

Section 3(a) replaces section 309(c) of the Public Health Service Act with a new section 309(c). It re-authorizes and extends through fiscal year 1978 grants to public and nonprofit schools of public health to provide assistance for (1) comprehensive multidisciplinary training in the field of public health; and (2) specialized consultant services and technical assistance in the field of public health.

Section 3(b) adds new subsections (d), (e) and (f) to section 309 of the Public Health Service Act. Subsection (d) authorizes the Secretary to prescribe by regulation terms and conditions as he deems necessary for making grants under subsection (c). Subsection (e) provides that the Secretary, in awarding grants under subsection (c), shall give consideration to the number of full and part-time students in such programs. When computing the number of such student enrollees for grant purposes, part-time students shall be included on the basis of credit hours needed to be classified as full time students. Subsection (f) authorizes to be appropriated: (1) for comprehensive and multidisciplinary training in the field of health: $15 million for the fiscal year ending June 30, 1973; $17.5 million for the fiscal year ending June 30, 1974; $20 million for the fiscal year ending June 30, 1975; $22.5 million for the fiscal year ending June 30, 1976; $25 million for the fiscal year ending June 30, 1977; and $27.5 million for the fiscal year ending June 30, 1978. (2) for specialized consultative services and technical assistance in the field of public health: $6 million for the fiscal year ending June 30, 1973; $7 million for the fiscal year ending June 30, 1974; $8 million for the fiscal year ending June 30, 1975; $9 million for the fiscal year ending June 30, 1976; $10 million for the fiscal year ending June 30, 1977; and $11 million for the fiscal year ending June 30, 1978.

By Mr. KENNEDY (for himself, Mr. CRANSTON, Mr. HUGHES, Mr. JAVITS, Mr. MONDALE, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENSON, Mr. WILLIAMS, Mr. EAGLETON, and Mr. PELL):

S. 3442. A bill to amend the Public Health Service Act to extend the authorization for grants for communicable disease control and vaccination assistance and for other purposes. Referred to the Committee on Labor and Public Welfare.

COMMUNICABLE DISEASE CONTROL AND VACCINATION ASSISTANCE ACT OF 1972

Mr. KENNEDY. Mr. President, I am introducing today an extension of the legislative authority for section 317 of the Public Health Service Act, the Communicable Disease Control and Vaccination Assistance Act. The 91st Congress passed the Communicable Disease Control Amendments of 1970 by an overwhelming vote. Public Law 91-464 amended section 317 of the Public Health Service Act authorizing grants for communicable disease control and vaccination assistance. The act provided appropriation authorizations ceilings at $75 million for fiscal year 1971 and $90 million for fiscal year 1972. The passage of this legislation was an expression of congressional concern over the toll being taken in this country by diseases which can be prevented or controlled. The legislation was supported by the National Tuberculosis and Respiratory Diseases Association, the National Foundation—March of Dimes, the American Social Health Association, and the Association of State and Territorial Health Officers. However, the administration and the Department of Health, Education, and Welfare specifically opposed the communicable disease control amendments.

Regrettably, the legislation has never been fully implemented, and the administration in the past has not requested appropriations under this authority. In fiscal year 1971, the Congress took the initiative and appropriated $2 million under the authority of section 317, to provide transitional funding for the phaseout of the tuberculosis control project grant program. In fiscal year 1972, again under section 317, Congress added $20 million to the administration's appropriation request. This action was taken in an effort to stem the current dramatic increase in the incidence of both venereal diseases and measles in this country. For fiscal 1973 the administration has requested a total of $14½ million for vaccination assistance programs. The request for the rubella vaccination program is $10 million, which represents a reduction of $3 million from fiscal 1972. The remaining $4½ million requested is to provide assistance for all the other immunization programs. The administration's appropriation request clearly fails to meet the critical program needs to provide effective immunization programs for the children of our Nation.

Since the expiration of the Vaccination Assistance Act in 1968, immunization levels in this country against measles, poliomyelitis, diphtheria, pertussis, and tetanus have declined. Much of the progress made in the nationwide program against measles has been lost, and reported cases of measles are now at the highest level since 1966. Approximately 75,000 cases were reported in 1971, up from approximately 47,000 in 1970. There is strong evidence to indicate the number of reported cases represents 10 percent of the actual total of measles infections. The increase in the number of cases is most disturbing when there is available an effective vaccine to prevent measles

and the often serious medical complications which result therefrom. Measles is not always a benign infectious process, but may cause middle ear infections and encephalitis, one of the most serious complications, resulting in mental retardation. Immunizations are estimated to have prevented 9.7 million measles infections, including 3,250 cases of mental retardation. Furthermore, the cost benefits to society are incalculable, reducing absences from school because of illness, and hospitalizations for treatment of serious medical complications. Immunization of all schoolchildren would eliminate epidemics of measles and immunization at 1 year of age would eradicate the disease completely. Yet, the U.S. survey demonstrates that less than two-thirds of our children are immunized against measles. Overall, the percentage is 57.2 percent for children 1 to 4 years old and 62.8 percent of children 5 to 9 years old. A consistent Federal effort to support and maintain immunization programs for measles is essential to prevent outbreaks of infection. The national program unfortunately at present operates in response to epidemics.

The cost of rubella and the toll to human life is even greater than measles. Its disastrous effect on the unborn child has been well demonstrated. In the most recent epidemic in 1964 and 1965, there were approximately 10 million cases, resulting in 15,000 to 20,000 miscarriages or stillbirths, and 20,000 children born with defects. Birth defects include deafness, blindness, mental retardation, and heart malformation. The Federal effort focusing on rubella immunizations has been well organized and successful. However, if support now falters or is significantly diminished, it is inevitable that a resurgence of infections will develop as in the case of measles.

This past summer the U.S. Public Health Service expressed its concern over the possibility of poliomyelitis outbreaks. The HEW response was to transfer funds from the rubella immunization program to deal with this potential disaster. The U.S. Immunization Survey has shown a declining proportion of children protected against polio. Only two-thirds of our children between 1 and 4 years of age are immunized. In 1965, 73.9 percent were immunized in contrast to 1971, where 67.3 percent are immunized. There is a real immunization gap and a serious possibility of localized epidemics of polio. It is folly to continue to respond to crises by diverting funds from one program to another in response to infection outbreaks.

The venereal disease problem in the United States is shocking. Gonorrhea, which has been on the increase for many years, is now virtually out of control with more than 600,000 cases reported during 1971. Optimism engendered by a 4-year decline in the incidence of syphilis during the 1960's has dissipated as syphilis has once again established an upward trend in this country. We simply must provide resources for programs to reduce these insidious infections which can be easily and effectively diagnosed and treated.

Tuberculosis, the No. 1 killer among the communicable diseases, is showing renewed strength. In 1969, at the height of a special tuberculosis control program, new cases of tuberculosis were reduced by 8.2 percent. In 1970, the rate of reduction had slowed to 5.1 percent, with an increase of 2.1 percent among our black population.

RH disease continues unhampered, bringing suffering to an estimated 27,000 families each year. Hemolytic disease due to RH incompatibility can mean, for an unborn baby, death before birth, or side effects such as jaundice or severe anemia. Because we are not making effective use of preventive measures, there continues to be human disability and suffering. For fiscal 1973 the administration has requested a mere $500,000 for control in this area.

Reported outbreaks of diphtheria highlight the sporatic Federal effort. Diptheria has averaged approximately 200 reported cases a year. Yet in 1970 there were 435 cases, with approximately 12 local outbreaks. Ten percent of diptheria cases are fatal. Despite the scientific knowledge and the effectiveness of immunization there has been a failure to apply consistent programs for eradication of the disease.

Immunizations are the most effective preventive medicine tool currently available. This can be demonstrated by several parameters including cost benefit financial ratios, reducing human suffering and medical disability, protection of the most vulnerable population—our children, and effectiveness in preventing disease. We should be able to design relatively simple, but effective systems to reach 100 percent of the population. Yet we are not now effectively or comprehensively protecting American children with our available vaccines. We have the vaccines available to protect every child in our Nation against well-known, crippling and disabling diseases. Unfortunately, the administration fails to recognize the need for a long-term Federal commitment to coordinate and plan control of these diseases.

It is clear that Congress must continue to take the lead in providing impetus for such a commitment. Special emphasis, special mechanisms, and special authorities must focus on the control and eradication of communicable diseases. We must strive for such a goal in this decade.

Mr. President, there is a vast unmet need in respect to dealing effectively with these communicable diseases, and the bill that I introduce today is one which is intended to meet that need. I am dismayed that the administration has yet to send to the Congress its recommendation for the extension of this expiring legislative authority.

There is no statement by the administration for the need to extend this authority in the State of the Union message. And there is no evidence of the administration's concern for these programs in the recently delivered Presidential health message.

Given the fact that this important legislation will expire within 3 months, I intend to do all that I can to insure swift and effective action in the Congress regarding communicable disease programs. The Senate Health Subcommittee to which this bill will be referred will hold hearings with a view toward reporting the bill back to the Senate. I might also note, Mr. President, that the ranking minority member of the Senate Labor Committee, the distinguished senior Senator from New York (Mr. JAVITS) has also introduced a bill of which I am cosponsor to specifically deal with the growing problem of venereal disease. I am sure that the hearings my subcommittee will hold will include a consideration of Senator JAVITS' bill with a view toward the amalgamation of its principal features into this whole legislative extension that I am introducing today.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD at this point.

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

S. 3442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Sec. 1, That this Act may be cited as the "Communicable Disease Control Amendments Act of 1972".

SEC. 2. (a) Section 317(a) of the Public Health Service Act is amended to read as follows: "There are authorized to be appropriated $90,000,000 for the fiscal year ending June 30, 1972; $90,000,000 for the fiscal year ending June 30, 1973, and each of the next four succeeding fiscal years to enable the Secretary to make grants to States, and in consultation with the State health authority to agencies and political subdivision of the States, under this subsection. In the awarding of such grants, the Secretary shall give consideration to the relative extent of the problems relating to one or more of the diseases referred to in subsection (b)(1) and to the design of the public health program to assure effective performance in preventing and controlling such disease. Such grants may be used for meeting the cost of communicable disease control programs and their attendant laboratory services, including the cost of studies to determine the communicable disease control needs of the communities and the best means of meeting such needs.

(b)(1) Subsection (b) of such section is amended by striking out the word "subsection" and inserting in lieu thereof "section".

(2) Subsection (b)(1) of such section is amended by striking out the phrase "on the recommendation of the National Advisory Health Council".

(c) Such section, as amended by this Act, is further amended by adding at the end thereof the following new subsection:

"(h)(1) The Secretary is authorized to make grants to, and enter into contracts with, public and private nonprofit agencies, organizations and institutions for the purpose of making the citizens of the United States aware of the consequences of the diseases described in subsection (b)(1) and the programs available which will avert such consequences.

(2) For the purpose of carrying out this subsection, there are authorized to be appropriated $5,000,000 for the fiscal year end-

ing June 30, 1973, and each of the next four succeeding fiscal years."

SECTION-BY-SECTION ANALYSIS OF THE COMMUNICABLE DISEASE CONTROL AMENDMENTS ACT

Section 1 states that the short title of this Act is "The Communicable Disease Control Amendments Act of 1972."

Section 2(a) replaces section 317(a) of the Public Health Service Act with a new section 317(a). It re-authorizes and extends through fiscal year 1977 grants for communicable disease control. It authorizes the Secretary to make grants for such purposes to states and the agencies and political subdivisions of the states. It directs the Secretary to consult with state health authorities in awarding such grants to agencies and political subdivisions of the states. When awarding such grants, the Secretary shall give consideration to the relative extent of the problems relating to the diseases outlined in subsection (b) (1) of this act and to the design of public health programs. Grants will be used to meet costs of control programs and attendant laboratory services. For such grants, there are authorized to be appropriated $90 million for the fiscal year ending June 30, 1973; $90 million for the fiscal year ending June 30, 1974; $90 million for the fiscal year ending June 30, 1975; $90 million for the fiscal year ending June 30, 1976; and $90 million for the fiscal year ending June 30, 1977.

Section 2(b) (1) is a technical amendment to section 317(a) of the Public Health Service Act.

Section 2(b) (2) removes the restriction that requires the Secretary to determine which communicable disease control programs are necessary on the recommendation of the National Advisory Health Council.

Section 2(c) creates a new subsection (h) to section 317 of the Public Health Service Act authorizing the Secretary to enter into contracts with private and nonprofit agencies and organizations for public education on the consequences of communicable disease infections and availability of programs for immunization against such infections. For such grants there are authorized to be appropriated: $5 million for the fiscal year ending June 30, 1973; $5 million for the fiscal year ending June 30, 1974; $5 million for the fiscal year ending June 30, 1975; $5 million for the fiscal year ending June 30, 1976; and $5 million for the fiscal year ending June 30, 1977.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2956

At the request of Mr. JAVITS, the Senator from Ohio (Mr. SAXBE), and the Senator from Oregon (Mr. HATFIELD), were added as cosponsors of S. 2956, the War Powers Act.

S. 3327

At the request of Mr. KENNEDY, the Senator from Connecticut (Mr. RIBICOFF) and the Senator from Michigan (Mr. HART) were added as cosponsors of S. 3327, the "Health Maintenance Organization and Resources Development Act of 1972."

S. 3380

At the request of Mr. Moss, the Senator from Montana (Mr. METCALF) was added as a cosponsor of S. 3380, a bill to permit immediate retirement of certain Federal employees.

SENATE CONCURRENT RESOLUTION 73—SUBMISSION OF A CONCURRENT RESOLUTION OF WELCOME TO INTERALLIED CONFEDERATION OF RESERVE OFFICERS MEETING IN WASHINGTON, AUGUST 7–13, 1972

(Referred to the Committee on Foreign Relations.)

Mr. THURMOND. Mr. President, among many of the outstanding services rendered by the Reserve Officers Association of the United States in support of the national security of this country is the participation of its membership in the Interallied Confederation of Reserve Officers.

This organization, which is headquartered in Europe, is made up of officers from the various military services of those nations which are members of the North Atlantic Treaty Organization. Some 19 nations have officers which participate in this confederation and meet annually, usually in the capital city of one of the NATO European partners.

On August 7–13, 1972, the Interallied Confederation of Reserve Officers will observe its 25th anniversary and in so doing will stage its first meeting in this country. Washington, D.C., will be the site of this session at which the officers of these various nations will visit us in the uniform of their respective countries.

The Reserve Officers Association of the United States and the Department of Defense will serve as joint hosts with the Department of State and other governmental agencies participating.

Mr. President, this organization was founded in November of 1948 at Brussels by the Reserve Officers Associations of Belgium, France, and the Netherlands. It had an original membership of approximately 120,000 reserve officers of all the military branches. The abbreviation of the group, CIOR, derives from the original French, "Confederation Interalliee des Officiers de Reserve."

This organization has made an outstanding contribution toward the defense of free world nations and has carried out well its objectives. Its principal objectives include:

First. To contribute to the strengthening of the defense of the signatory countries of the North Atlantic Treaty;

Second. To establish closer relations among reserve officers of the countries of the Atlantic Alliance, in order that these officers may better know and understand each other; and

Third. To support the policies of the Atlantic Alliance and to fully cooperate with this organization in carrying out its objectives.

Mr. President, I send to the desk a concurrent resolution which acknowledges the meeting of this group in August and which commends the joint effort of the Reserve Officers Association and the Department of Defense in hosting this meeting.

The resolution reads as follows:

Whereas the Interallied Confederation of Reserve Officers (ICRO), an association of reserve officers from twelve of the nations comprising the North Atlantic Treaty Organization, will hold its XXVth Congress at Washington, D.C. August 7 through August 13, 1972; and

Whereas the Reserve Officers Association of the United States and the Department of Defense will serve as joint hosts to such XXVth Congress; and

Whereas the United States, through the Department of Defense, will conduct military competitions in conjunction with and as a constituent part of such XXVth Congress: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States extends to the Interallied Confederation of Reserve Officers a cordial welcome to the United States on the occasion of the XXVth Congress of that organization to be held in Washington, D.C. August 7 through August 13, 1972, and commends the joint effort of the Reserve Officers Association of the United States and the Department of Defense in hosting the XXVth Congress of that organization, and urges all departments and agencies of the Government to cooperate with and assist the Interallied Confederation of Reserve Officers in carrying out its activities and programs during the period referred to above.

ADDITIONAL COSPONSOR OF A RESOLUTION

At the request of Mr. STEVENS, the Senator from California (Mr. CRANSTON) was added as a cosponsor of Senate Resolution 275, authorizing Senators to hire interns.

SOCIAL SECURITY AMENDMENTS OF 1972—AMENDMENT

AMENDMENT NO. 1090

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

Mr. EAGLETON. Mr. President, I am submitting today an amendment to H.R. 1, the Social Security Amendments of 1972, to provide for the disregarding of property tax rebates in computing income for purposes of the proposed adult assistance program embodied in title III of H.R. 1 and of the existing programs of old age assistance, aid to the blind, and aid to the permanently and totally disabled.

At least eight States—Wisconsin, Minnesota, California, Vermont, Kansas, Colorado, Maine, and Pennsylvania—now have in effect a form of property tax relief for the elderly known as the "circuit-breaker." Under the circuit-breaker system, low-income elderly households receive State income tax credits or, where there is little or no income tax liability, cash rebates for that portion of their residential property taxes defined as excessive. In three States—California, Maine, and Pennsylvania—all relief is provided in the form of cash rebates.

The Advisory Commission on Intergovernmental Relations has recommended the circuit-breaker plan as "providing significant relief at modest cost to those who need it most." A number of other States, including Missouri, are considering this form of property tax relief for their senior citizens.

Under present Federal law and under the proposed adult assistance program, a cash rebate of this type would apparently have to be taken into account in determining the need for assistance of an aged, blind, or disabled individual.

With regard to the proposed new program, section 2012(b)(2)(A) of H.R. 1 provides for the exclusion of unearned income which is received infrequently or irregularly if such income does not exceed $60 in a quarter. However, under existing State circuit breaker laws, households with the lowest incomes may receive cash rebates of as much as $200.

Current Federal law governing assistance to the aged, blind, and disabled does not provide for any disregarding of infrequently or irregularly received income. For instance, when Congress provides a social security benefit increase which involves a lump-sum retroactive payment, the law must also include a provision giving the States permission to disregard that retroactive payment in determining need for public assistance.

The result is that many of those elderly homeowners who receive old age assistance would be unable to benefit from a property tax rebate because their grants would be reduced by the amount of the rebate.

The chairman of the California Senate Committee on Health and Welfare has stated, in a letter to the chairman of the Senate Finance Committee, that the absence of a disregard provision in Federal law has rendered California's senior citizens property tax assistance law ineffective in helping those elderly homeowners who need it most.

Mr. President, my amendment would include specific language in titles I, X, XIV, and XVI and the proposed title XX of the Social Security Act providing for the disregarding of any amounts received from a State or political subdivision as a rebate of real property taxes in determining the need for assistance of any aged, blind, or disabled individual.

The senior citizens of this Nation desperately need relief from the burden of property taxes. The effect of my amendment will be to make certain that those elderly persons who are in the greatest need can receive the benefit of State property tax relief laws.

ANNOUNCEMENT BY THE COMMITTEE ON COMMERCE

Mr. MANSFIELD. Mr. President, on behalf of the chairman of the Committee on Commerce, the distinguished Senator from Washington (Mr. MAGNUSON), I ask unanimous consent that an announcement by the committee be printed at this point in the RECORD.

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

AMENDMENT FROM THE SENATE COMMITTEE ON COMMERCE

Chairman Warren G. Magnuson (D-Wash.) today requested all persons interested in S. 2020 and H.R. 1074, bills to amend section 220(b) of the Interstate Commerce Act to permit motor carriers to make annual reports on the basis of a thirteen-period accounting year, to file their comments with the Committee by April 15, 1972. H.R. 1074 passed the House of Representatives on Auguest 2, 1971. After reviewing the comments of interested persons, the Committee may proceed to take up the bills in executive session if it appears that hearings on the measures are not warranted.

For further information on this matter, please contact John M. Cary, Staff Counsel, Senate Commerce Committee, 5202 New Senate Office Building, Washington, D.C. 20510, telephone (202) 225-9351.

NOTICE OF HEARING ON JUDICIAL DISQUALIFICATION

Mr. ROBERT C. BYRD. Mr. President, on behalf of the chairman of the Judiciary Committee's Subcommittee on Improvement in Judicial Machinery (Mr. BURDICK), I wish to announce the continuation of hearings on S. 1553 and S. 1886 which seek to amend existing law—28 U.S.C. 455—relating to the circumstances under which a Federal judge should disqualify himself from participation in a case because of his interest in or connection with the matter in controversy.

The hearing will be held on Thursday, April 13, 1972, beginning at 10 a.m., in room 2228, New Senate Office Building.

The scheduled witnesses are Judge Roger Traynor and Prof. E. Wayne Thode, chairman and reporter, respectively, of the ABA Special Committee on Standards of Judicial Conduct.

Those who wish to testify or submit a statement for inclusion in the record should communicate as soon as possible with the Subcommittee on Improvement in Judicial Machinery, 6306 New Senate Office Building.

ANNOUNCEMENT OF HEARINGS RELATING TO VIETNAM ORPHANS

Mr. SPONG. Mr. President, on behalf of the Senator from Arkansas (Mr. FULBRIGHT), I wish to announce that the Committee on Foreign Relations has scheduled a public hearing on S. 2497, relating to Vietnam orphans, on Wednesday, April 5, begininng at 10 a.m. in room 4221 of the New Senate Office Building.

Persons interested in testifying on this bill should communicate with the chief clerk of the committee.

NOTICE OF HEARINGS ON REVISION OF FEDERAL COURT APPELLATE SYSTEM

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished junior Senator from North Dakota (Mr. BURDICK), I wish to announce that open public hearings have been scheduled before the Subcommittee on Improvements in Judicial Machinery on Senate Joint Resolution 122, a joint resolution to create a commission to study and recommend a revision of the appellate system of the Federal courts. Hearings will be held on April 11, 1972, in room 6202, New Senate Office Building and on April 12, 1972, in room 457, Old Senate Office Building. The hour is 10 a.m. on both days.

The Judicial Conference of the United States has recommended that the several circuits be geographically realined. Legal scholars have questioned whether this is anything but a short-term remedy and have pointed out that the problems of our circuit courts, brought on by increased caseloads, are in need of long-term solutions. At these hearings, we will be privileged to hear from the chief judges of the busiest circuit courts, from the Director of the Federal Judicial Center and from legal scholars.

Those who wish to testify or submit a statement for inclusion in the record should communicate as soon as possible with the Subcommittee on Improvements in Judicial Machinery, 6306 New Senate Office Building.

ADDITIONAL STATEMENTS

THE FEDERAL TRIAL EXAMINERS CONFERENCE, WAKE FOREST UNIVERSITY, GEORGE WASHINGTON UNIVERSITY, AND THE NATIONAL NEWSPAPER ASSOCIATION HONOR SENATOR ERVIN

Mr. MANSFIELD. Mr. President, during the recent past the Federal Trial Examiners Conference, Wake Forest University, George Washington University, and the National Newspaper Association have honored our colleague, Senator SAM J. ERVIN, Jr., of North Carolina.

On May 15, 1971, the Federal Trial Examiners Conference presented its Award of Merit to the Honorable SAM J. ERVIN, Jr., U.S. Senator, in recognition of his outstanding contributions to constitutional liberties and due process of laws.

As its commencement in June 1971, Wake Forest University conferred upon Senator ERVIN the honorable degree of doctor of laws under a citation reading as follows:

SAMUEL JAMES ERVIN, JR.

The senior senator from North Carolina resists the conventional labels of politics. For most of his 17 years in Washington he has been carelessly typed by national observers as the conservative Southern Democrat *par excellence*—eloquent and wise and shrewdly effective but steadfastly oriented toward a glorious past. Less often noticed have been his persistent efforts in behalf of individual liberty, whether in support of the Supreme Court's decision against required prayer in the public schools or in opposition to the so-called "no knock" provisions of the 1970 District of Columbia crime bill. In recent months he has been a conspicuous critic of government surveillance of the lives of individual citizens.

To understand these seeming contradictions in Sam Ervin, we need recognize only his abiding commitment to the Constitution of the United States as the supreme law of this Nation. Both his respect for continuity and tradition and his defense of the freedom of the individual derive from this commitment. As the poet Wordsworth said of another eminent constitutionalist, Edmund Burke, he "explodes upstart theory" and "the majesty proclaims of Institutes and Laws, hallowed by time."

This judicious North Carolinan—a native of Morganton, a graduate of the University at Chapel Hill, a former state representative and Superior Court and Supreme Court judge—United States Senator Sam J. Ervin,

Jr., is presented for the degree of Doctor of Laws.

At its winter convocation held in Constitution Hall, Washington, D.C., on February 21, 1972, George Washington University conferred upon Senator ERVIN, who made the convocation address on "Freedom," the honorary degree of doctor of laws under the following citation:

SAMUEL JAMES ERVIN, JR.

Senator Ervin, you have been a bulwark for the protection of our constitutional liberties all through your long and distinguished career. You are the conscience of the Congress in the protection of individual liberties against all transgressions. The American people have been educated in the intricacies of our constitutional order through your Committees on Constitutional Rights and Separation of Powers. As a dedicated public servant and a distinguished scholar, you are in the forefront of modern American statesmen. As a symbol of your unremitting efforts to further the cause of individual human dignity, it is indeed appropriate that The George Washington University confer upon you the degree of Doctor of Laws.

LLOYD H. ELLIOTT,
President.

The program of the winter convocation of George Washington University contained the following summary of Senator ERVIN's career:

Samuel James Ervin, Jr., senior United States Senator from North Carolina, received the degrees of Bachelor of Arts from the University of North Carolina in 1917 and Bachelor of Laws from Harvard University in 1922. He has received honorary degrees from the University of North Carolina, Western Carolina University, Suffolk University, and Wake Forest University.

Senator Ervin served as a Private in the First Division, American Expeditionary Forces, during the First World War. He was twice wounded in battle and twice cited for gallantry in action. He was awarded the French Fourragere, the Purple Heart with Oak Leaf Cluster, the Silver Star, and the Distinguished Service Cross.

Senator Ervin has practiced law since 1919 except during his periods of service on the bench and in Congress. He was a judge on the Burke County Criminal Court from 1935 to 1937, a judge on the North Carolina Superior Court from 1937 to 1943, and Associate Justice of the North Carolina Supreme Court from 1948 to 1954. Since 1954, he has been United States Senator from North Carolina, and he is now the second ranking Democrat on the Senate Judiciary Committee. He served in the North Carolina Legislature during 1923, 1925, and 1931, and as Representative from the Tenth District of North Carolina in the 79th Congress, 1946–1947.

Senator Ervin has been an assiduous protector of individual rights and liberties. As Chairman of the Senate Subcommittees on Separation of Powers and on Constitutional Rights, he has been instrumental in educating the American people to some of the dangers of an increasingly mechanized society and to the steady increase of power in the Executive Branch. In addition, he is a frequent lecturer on constitutional matters—many consider him to be the leading constitutional lawyer in the Congress—and has argued (and won) important cases before the United States Supreme Court. Human freedom has no stronger advocate than Senator Ervin."

On March 16, 1972, in a ceremony in Washington, D.C., the National Newspaper Association conferred upon Senator ERVIN its Award of Merit on an engraved plaque reading as follows:

National Newspaper Association. 1972. Award of Merit to a great American. Presented to The Honorable Sam J. Ervin, Jr., in recognition of his efforts to articulate the true meaning and significance of the United States Constitution, especially in First Amendment rights, for the American people. By the President of the National Newspaper Association.

CLARENCE MITCHELL'S COMMENTS ON EQUAL EDUCATIONAL OPPORTUNITIES LEGISLATION

Mr. DOMINICK. Mr. President, yesterday before the Education Subcommittee, my old and respected friend, Clarence Mitchell, director of the Washington Bureau of the NAACP, made some intemperate and, I believe, irresponsible comments concerning President Nixon's equal educational opportunities legislation, which incorporates rules on forced busing.

In choosing the road of inflammatory rhetoric rather than the road of reasoned criticism, Mr. Mitchell served to confirm President Nixon's concern that a fair, objective resolution of the busing dilemma will be difficult to achieve during the present period of imminent pressure and rampant emotionalism. In utilizing the hearing as a rhetorical soapbox, Mr. Mitchell either overlooked or chose to ignore the substance of the Equal Educational Opportunities Act. In so doing, the basic guarantees of the bill were not discussed—basic guarantees, such as those contained in section 2(a)(1) and section 201. Section 2(a)(1):

Declares it to be the policy of the United States that all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, or national origin.

Section 201 gives legal life to that declaration by defining national standards to guide our courts so that—

No state shall deny equal educational opportunity to an individual on account of his race, color or national origin. . . .

Unfortunately, Mr. Mitchell thought such guarantees unworthy of mention.

Mr. President, the essence of what President Nixon is seeking to accomplish with his busing package is perhaps best exemplified by a recent—February 25, 1972—Gallup poll conducted for Newsweek magazine. It concludes that while 66 percent of those polled believe that schools, north and south, should be desegregated, 69 percent oppose compulsory busing in order to achieve that desegregation. In explaining this result, the poll states:

In summary, most whites draw a distinction between the issues of school desegregation and compulsory busing. The principle of desegregation has been accepted in all walks of life, and is not a regional issue any more. Busing as a technique to achieve desegregation is another matter. Primarily because of commitment to the concept of the neighborhood school, most whites oppose busing. Again, this is not a regional issue, with strong opposition in all regions and in all walks of life. Finally, opinion is so strong on this issue that the weight of opinion favors constitutional action to prevent busing.

Mr. President, I ask unanimous consent that the 3-page summary of the February 25 Gallup Organization, Inc.'s public opinion survey be included in the RECORD at this point.

Mr. President, despite such emotional barrages as the Education Subcommittee suffered from yesterday, I believe, perhaps naively, a rational, objective discussion of the merits of the President's busing plan is possible. At least, I refuse to give up on such possibilities at this early date.

Toward this end, Mr. President, I present two objective facts which I believe will restore our perspective of the position of the blacks on the busing issue. Two respected and representative black organizations—the Congress of Racial Equality and the Black Congress—have already rejected the concept of forced busing. Recently in Gary, Ind., 3,009 delegates from all parts of the Nation voted on and passed a Black Congress resolution which, as reported in the March 27 issue of Time magazine, stated:

We condemn racial integration of schools as a bankrupt and suicidal method of desegregating the schools based on the false notion that black children are unable to learn unless they are in the same setting as white children. As an alternative to busing black children to achieve racial balance, we demand quality education in the black community through the control of our school districts and an equal share of the money.

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

SUMMARY OF GALLUP POLL

A clear majority of 66 per cent take the position that schools, north and south, should be desegregated so that black and white pupils can attend the same school. Among southern white, 58 per cent hold this view, while 68 per cent of whites outside the south do so. The principle of school desegregation therefore, has been accepted in all regions of the country. Also, in white households with any children under 18, that is, those most directly concerned, 70 per cent favor desegregation.

Nevertheless, a comparable majority of 69 per cent oppose compulsory busing in order to achieve school desegregation. While the number of blacks interviewed is too small to be projected with statistical reliability, the indications are that a sizable proportion of blacks oppose busing. Northern and southern whites are equally opposed to busing—68 per cent and 74 per cent respectively. There is little difference among whites by age, sex, education, or presence of children under 18 in the proportion who oppose busing.

When asked why they oppose busing, three-fifths of those in opposition (or 42 per cent of all those interviewed) said that children shouldn't have to leave the neighborhood. A handful (3 per cent of all those interviewed) gave opposition to integration as their reason.

Those who favor busing most often gave as their reasons "better/equal education" and "only way to solve race problem".

Opinion regarding busing is, on the testimony of those interviewed, stable. Among both those who oppose and favor busing, the predominant response is that their current view does not represent a change in mind from what they believed in the past.

ATTITUDE TOWARD BUSING

[In percent]

	Favor	Oppose	No opinion	Total
Change in opinion	4	8	2	14
No change	14	59	5	78
Don't remember	2	2	4	8
Total	20	69	11	100

Among those who have changed their mind, a majority now oppose busing:

Those who have changed their mind

	Percent
Now favors busing	29
Now opposes busing	59
Now has no opinion	12
Total	100

Among those who have not changed their mind, the predominant position is opposition to busing.

Those who have not changed their mind

	Percent
Now favors busing	18
Now opposes busing	75
Now has no opinion	7
Total	100

Public opinion is divided concerning a constitutional amendment against busing, though the weight of opinion supports such a prohibition. Forty-six per cent are against busing and are in favor of constitutional ban. Thirty-five per cent either favor busing or else oppose the passage of a constitutional ban even though they also oppose busing:

ATTITUDE TOWARD CONSTITUTIONAL PROHIBITION

[In percent]

	All adults	All whites
Opposes busing and favors amendment	46	49
Opposes busing and opposes amendment	15	15
Favors busing	20	17
Total opposes amendment or favors busing	35	32
No opinion on busing and/or amendment	19	19
Total	100	100

Support for a constitutional prohibition against busing is about the same among southern whites (48%) as among whites living outside the south (45%). Among whites, support for constitutional prohibition tends to be greater among men (54%), those 18–39 years (51%), and those who live in households with children under 18 (48%).

At present, 3 per cent of all those interviewed have children who are being bused away from their local school in order to achieve racial balance in schools. Two per cent of whites outside the south, and 4 per cent of southern whites report that they have children who are being bused for this purpose. Thus, for most whites, busing is an issue that raises concern over the future rather than about present conditions.

In summary, most whites draw a distinction between the issues of school desegregation and compulsory busing. The principle of desegregation has been accepted in all walks of life, and is not a regional issue any more. Busing as a technique to achieve desegregation is another matter. Primarily because of commitment to the concept of the neighborhood school, most whites oppose busing. Again, this is not a regional issue, with strong opposition in all regions and in all walks of life. Finally, opinion is so strong on this issue that the weight of opinion favors constitutional action to prevent busing.

THE VALUE OF GRADES

Mr. ROBERT C. BYRD. Mr. President, over the past several years, there has been a growing trend in educational circles to do away with—or to diminish the importance of—grades for elementary and secondary school students. Instead of an A-through-F-system, or a numerical system, we now find many schools judging a student's work on a system of "pass" or "fail," or "satisfactory" or "unsatisfactory."

The abolishment of grades has resulted in controversy wherever it has occurred, and I find myself in agreement with those educators who oppose gradeless systems as being unrealistic in our society.

To be sure, all students are, or should be, disappointed by poor grades, and some could even suffer psychological damage as a result of repeated failures in school work. But doing away with grades does not change the competitive nature of the society for which these students are supposedly being prepared. Doing away with grades does not avert disappointment, or even traumas; it only postpones them.

There must be some tangible system for judging the work of a student—teachers and parents need this. And there must be some system whereby students can compare their work with that of their peers. I do not believe that a "pass-fail" or a "satisfactory-unsatisfactory" system offers the necessary measuring stick. Until some new system is proved better, I will support alphabetical and numerical systems of grading students.

So will many of the educators in our country. Ray H. Watson, a school principal in Wirt County, W. Va., is an example of such an educator.

Writing in the Wirt County Journal of February 3, Mr. Watson stated that school grades are "emblematic of life—our rewards are hard to come by, and the common denominator for success is hard work and ambition. The sooner we learn this, the more lasting it becomes."

Mr. Watson posed the rhetorical question:

Why do some students make good grades and others make poor grades?

He said the answer is simple:

One person merely works harder at what he tries.

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:

GRADES

(By Ray H. Watson)

As long as there are schools, some one will insist that a continuous evaluation of students exist. We know this more readily by grades that are reported on the ever present proverbial report card. This has long been the instrument used for the school to keep parents informed of the progress of their children.

There is a lot of criticism of grades from educators all over the country—but they still persist, and as long as parents want to know how their child is doing, and students want to know how they compare to the other students, and employers insist on knowing about their academic background, there will always be some form of evaluation. True, the symbols may change, but the grades will still be represented.

We must face a fact—that grades are an indication of something. We can ascertain the academic proficiency of students in specific fields or compare them with their peers throughout the nation and predict their probability of success in certain areas.

Why do some students make good grades, and others make poor grades?

I also might ask why is one person a better worker than another?—more honest?—or more healthy?—or even more prosperous?

Actually, in most cases, the answer is very simple—one person merely works harder at what he tries.

What are the causes of poor grades?

If I had to select one paramount reason that would cover most of our situations, I would say "Poor Attitude." Some children simply do not like school, are not interested in studies, and are convinced that they do not need school. This student also constitutes our biggest disciplinary problem. Ninety per cent of these students, with the proper approach, could achieve a higher academic grade. Usually they not only have problems at school but also at home, and they are not able to solve these problems.

There are a few students who are not mentally able to achieve normal academic progress. But as a rule, most students with the right attitude, consistent school attendance, and hard work, can make passing grades.

Too many students miss school with the approval of their parents. They certainly cannot achieve if they are home. Once they start missing, it becomes easier to miss as the year goes along.

I think we all must work harder to help these kids along. The student has a responsibility to himself to prepare for his future. The parent must see that he is in school, does his home work, and maintains good conduct. The teacher must also know his student—what his potential is, and part of his problems—and should make every effort to present his material in an effective and interesting manner.

As long as grades are with us, they will continue to be elusive to certain students, and an item of comfort for others. We find this rather emblematic of life—our rewards are hard to come by, and the common denominator for success is hard work and ambition. The sooner we learn this, the more lasting it becomes.

INTERNATIONAL MONETARY SYSTEM

Mr. JAVITS. Mr. President, in an important policy statement which was released today, the prestigious Atlantic Council said that it was urgent that "visible multilateral negotiations" be initiated at the earliest possible time to restructure and modernize the international monetary system.

I note that this recommendation is totally in keeping with the spirit of the communique which was issued on behalf of the group of 10 nations when the interim Smithsonian agreement was successfully concluded on December 18. This communique stated, in part:

The Ministers and Governors agreed that discussions should be promptly undertaken, particularly in the framework of the IMF, to consider reform of the international monetary system over the longer term.

I note the Council's comment that:

As a practical matter it is wholly appropriate for the United States to take the lead in initiating the negotiations leading to an improved system. The U.S. has a particular responsibility in the system and a strong incentive to move further.

I think that the history of negotiations in the international economic area—and this includes both trade and monetary negotiations—does make it clear that without a strong U.S. leadership position commensurate with the U.S. position in the world, negotiations are not likely to progress satisfactorily.

I invite the attention of Senators and the administration to this statement, which is worthy of close attention. I ask unanimous consent that it be printed in the RECORD at this point along with the impressive list of the committee members who concur in the statement. The list includes a former Treasury Secretary, the former Chairman of the Federal Reserve System, and other distinguished authorities in the field of international finance.

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

LIST OF COMMITTEE MEMBERS

Chairman: Hon. Henry H. Fowler, Partner, Goldman, Sachs & Co.; Former Secretary of Treasury; Vice-Chairman, Atlantic Council.

Rapporteur: Dr. Sidney E. Rolfe, International Economist; Director, Atlantic Council.

Mr. Edward Bernstein: President, EMB, Ltd.; Formerly Executive Secretary and Chief Technical Advisor to Bretton Woods.

Hon. Percival F. Brundage: Former Director of the Budget; Director, Atlantic Council.

Hon. W. Randolph Burgess: Former Under Secretary of the Treasury; Ambassador to NATO and OEEC; Chairman. Atlantic Council.

Mr. Emilio Collado: Executive Vice President, Standard Oil (N.J.); Director, Atlantic.

Hon. Frederick L. Deming: President, Independent Bancorporation; Former Under Secretary of Treasury; Director, Atlantic Council.

Hon. Wm. McChesney Martin: Former Chairman, Board of Governors of the Federal Reserve; Director, Atlantic Council.

Mr. Judd Polk: Economist, Director, Program & Studies, U.S. Council of the International Chamber of Commerce.

Hon. Eugene V. Rostow: Professor, Yale Law School; Former Under Secretary, State; Vice Chairman, Atlantic Council.

Mr. L.R.W. Soutendijk: Manager, Brown Brothers, Harriman and Company.

STATEMENT ATLANTIC COUNCIL MONETARY COMMITTEE

In the view of this Committee it is urgent that multilateral negotiations be started at the earliest possible time to restructure and modernize the international monetary system, and to revitalize the system of international economic cooperation among the nations.

The Committee welcomed the statement of Secretary Connally of March 15th, announcing the beginning of conferences looking toward selection of the forum for the negotiations as a further step in the right direction.

A suitable basis for the negotiations was set forth in the communique of December 18, 1971 accompanying the agreement of the Group of Ten nations for a new pattern of exchange rates. This agreement was an important first step toward the restoration of the world's monetary system, but only a first step. It halted what could have begun a march toward exchange controls and sharply reduced levels of international trade and investment. But much remains to be done.

The Group of Ten explicitly recognized that new exchange rates and temporary wider bands would not be sufficient to solve the problem. The final paragraph of the communique of the December 18 meeting sets forth an admirably succinct but ordered agenda for the subsequent steps. It directs attention to the question of insuring the proper degree of convertibility of currencies in the system and thus defending stable exchange rates.

It calls for examination of the proper role of gold, of reserve currencies, Special Drawing Rights, the appropriate volume of liquidity, and for methods to establish a suitable degree of flexibility of exchange rates. Finally, attention is to be paid to the movement of liquid capital.

In the months since December 18 the continued dollar deficit has given rise to disappointment, and even some new movement towards exchange controls. There is criticism abroad of American fiscal and monetary policy. The dollar continues weak on international markets. The hoped for substantial reflow of short-term funds into the U.S. has not taken place. Some of the long term flows into the U.S. which might have helped the U.S. balance of payments and had been expected, have not materialized. There are fears expressed abroad that the dollar devaluation might not have been sufficient. The rising price of gold may reflect this fear. Dissatisfaction has been expressed because of the continuing inconvertibility of the dollar into any reserve asset.

To a considerable extent, the new developing fears about the dollar are as exaggerated as were the hopes for a quick reversal of the situation after the Smithsonian statement. Devaluations which have achieved good results, for example in England and France, did so only after a considerable time lag. The same course of events might be expected for the recent realignment of the dollar with certain other currencies, which primarily affects the trade balance. The fact that the U.S. economy is now expanding, to a greater extent than those of some of its trading partners, may further delay the salutary trade effects of the devaluation. As part of this conjecture the relatively lower level of U.S. interest rates, as compared to those of some of the other major countries, has also tended to delay the reflow of capital into the U.S.

As a practical matter it is wholly appropriate for the U.S. to take the lead in initiating the negotiations leading to an improved system. The U.S. has a particular responsibility in the system and a strong incentive to move further. The American dollar is still at the core of the world monetary system. A major part of the world's business is done in dollars and this will continue to be so even if new monetary devices take the place of the dollar as a reserve currency.

FUTURE NEGOTIATIONS

The negotiations leading to a revised international monetary system (advocated in this statement) should be visibly undertaken. They should meet the public eye sufficiently to reassure those engaged in international trade and capital movements that fundamental solutions are indeed on the way. All concerned with international trade and investment should be given cause to feel that the current opportunity to modernize the system is being grasped firmly. The elements of a negotiatory apparatus already exist in the IMF, the Group of Ten or other relevant multilateral bodies. The will to seek solutions by prompt utilization of this machinery must be backed by the positive political leadership of the leading countries, including the U.S.

As the ultimate solutions are complex and technical and must be the result of negotiatory processes, it would be presumptuous to attempt to define here the precise nature of those solutions. Yet there has been sufficient exchange of ideas and agreement among experts and practitioners in all of the developed countries so that at least a broad outline of the future monetary system can be discerned.

Clearly a new internationally created and accepted reserve unit to supplement and perhaps eventually replace the reserve currencies and gold will need to be established. Whether that new reserve will be Special Drawing Rights (SDRs), which are already in place and functioning, or an alternative reserve or composite reserve unit upon which reasonable men can agree, is an important detail but one which need not delay negotiations. The principle is clear. The way to start the clarification of detail is to start negotiating.

The establishment of such an international reserve unit would provide the world's monetary system with the needed common denominator (numeraire) for currencies. It would also give all currencies, including the dollar, the flexibility in future to revalue or devalue in terms of this reserve as may be required. Further, it would provide a sound basis for refunding the overhanging balances of dollars in excess of those needed by central banks for stabilizing established currency relationships in foreign exchange markets.

There is also a broad consensus not only among scholars, but among central bankers and finance ministers, as evidenced by agreements to date, with respect to the need for some increased flexibility in the fixing of relative currency values. The temporary institution of wider bands in the December 18 agreement is itself evidence of this consensus. Moreover, there is consensus that there should be smaller and more frequent changes in parities when the need for these is clearly evident. It is a matter for negotiations as to how the needed changes should be activated; whether on the initiative of the IMF, or triggered by changes in reserve position, or by alternative techniques. The fact is that both deficit and surplus countries must be more willing, and must be persuaded or required, to make timely changes to prevent impending crises, large capital flows in anticipation of parity changes, and finally the traumatic decision to change a parity long after the change is due.

Consensus has already developed that improved economic cooperation among central banks and treasuries is essential to minimize the damaging consequences of short term capital ("hot money") flows. The question of dealing with such capital flows therefore should also be part of the negotiations, as the Smithsonian communique indicated.

ON INFLATION AND TRADE

The principal purpose of the currency realignments of December 18 was to restore a surplus in the U.S. trade balance, and thereby confidence in the dollar abroad. But clearly the realignments alone cannot accomplish this purpose. The control of domestic inflation is the key to a sustained improvement in the trade balance, and to confidence. As The Williams Commission Report states the case:

"Thus in large part, confidence in the dollar must be viewed as a reflection of U.S. domestic economic developments and the ability of our country to manage its own economy."

The strength of the dollar is based on the strength of the American economy. Confidence in the dollar requires not only a properly functioning international monetary system, but also domestic policies which should assure a reasonable measure of price stability, of increasing productivity and a high level of employment in the U.S. Only by these means can American costs and prices be kept internationally competitive, the new parity maintained, and the U.S. restore its

balance of payments on trade to a healthy level.

Some progress toward the reduction of American inflation has already taken place. With the 'bulge' of Vietnam spending reduced this is to be expected. In addition, the price and wage control actions taken by the government to break inflationary psychology and the cost-push cycle have been significantly effective.

Since the introduction of controls the American inflation appears to have proceeded at a lower rate than that of our principal foreign competitors. Consequently American costs and prices are rising less and this pattern, if sufficiently maintained, should eventually sustain improvements in the American trade balance.

An effective and sustained attack on domestic inflation in the U.S. is essential. This attack will require firm unwavering direction in the Executive branch, and a solid bipartisan support in Congress. It will require determination not just for a season or two but so long as the danger of inflation lasts.

Inflationary psychology is not the sole province of speculators or those who seek anticipatory wage relief. It has become deeply embedded in our society and must be offset by some vigorous reassertions of basic truths. The battle against inflation requires the understanding and support of the people generally. The message must be driven home that when wage increases averaged throughout the economic exceed national increases in productivity, inflation is the inevitable result. An increase in productivity requires, in turn, cooperation to provide and utilize the most efficient machinery, methods of operation and quality of performance in industry.

Continued trade liberalization is an essential concomitant to international monetary reform and the fight against inflation if the world economy is to grow and not falter in the years ahead. Negotiations to resolve certain immediate obstructions have taken place in 1971 and will continue this year. While the results are described as mixed, some trade liberalization steps of immediate and tangible value to the U.S. have resulted. Comprehensive trade negotiations with Japan and Western Europe to remove some of the heretofore major barriers are to commence in 1973. The efforts at trade liberalization must be supported, and encouraged.

In the midst of the battle against inflation and some visible progress toward victory, the announcement of budget deficits of almost $39 billion this fiscal year and some $25½ billion next year has been a setback to expectations, both here and abroad, giving rise to fears of increased inflation in future.

These fears we believe may well be exaggerated. In fact it is impossible to predict the inflationary impact of a large budget deficit when the autonomous factors in the economy are weak, as they have been. The large increase in domestic savings, and the continued demand for imports, have both lessened domestic spending. Nevertheless, there is a fundamental and continuing need for fiscal responsibility. The inevitable election year pressure for spending a little more for this or that must be successfully resisted. It is essential to hold down, to reduce rather than increase specific appropriations, to choose between relative priorities, and to reject or postpone the less essential ones. An effective legislated ceiling on expenditures would give confidence through this period that these objectives will be achieved.

Budget deficits need not automatically make for a weaker position for the dollar abroad. That they do so reflects the generally uncertain condition of the international monetary order. But with proper exchange rates and an improved pattern in the balance of international payments, there is adequate room for monetary and fiscal policy to be adjusted to domestic needs, avoiding the extremes of policy that cause massive short term capital flows.

There is a natural tendency for significant international accomplishments to be followed by a period of complacency with a turning to other matters which assume a higher priority in the national agenda. There is also a tendency, particularly in an election year, to subordinate cooperation to potential competition. In our opinion the United States must avoid these two tendencies in 1972 if the international monetary system is to be preserved and improved in a timely fashion and perform its function adequately.

This paper urges a renewed sense of cooperation between the Congress and the Administration to restore domestic economic and financial stability, and, with respect to the problems of the international monetary order, to ensure the resumption of international initiatives. Unless we turn our attention to these matters again promptly and constructively, we may well find ourselves moving toward the type of crisis which was so narrowly avoided in the Fall of 1971.

SENATOR ERVIN FIXES HIS EYE ON BIG BROTHER

Mr. ALLEN. Mr. President, the February 1972 issue of the magazine "We The People of North Carolina" carried an article on Senator SAM J. ERVIN, JR., entitled "Morganton's First Citizen Fixes His Eye on Big Brother."

I ask unanimous consent that a copy of this article be printed at this point in the body of the RECORD.

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

MORGANTON'S FIRST CITIZEN FIXES HIS EYE ON BIG BROTHER

Not many New York and Washington journalists could tell you anything about the town of Morganton, North Carolina. But all of them know Morganton's most famous citizen, the Senior Senator from North Carolina.

Senator Sam J. Ervin, Jr., relaxed one mid-January afternoon during the Congressional recess in his home town law office. He was being interviewed by a reporter. His secretary, Miss Mary McBride, was out to lunch. The Senator himself had answered the reporter's knock on the door. The phone rang; the Senator answered. It was a New York journalist calling about Ervin's hearings last year into the U.S. Army's alleged spying activities upon civilians.

"The Army has no business acting as a national detective agency," said the Senator conversationally into the telephone. "Actually there was a law passed back in the last century forbidding United States Marshals from using the Army as a *posse comitatus*. I think that could be applied to what the Army's trying to do now."

Having satisfied the caller's queries, the Senator turned back to his interviewer: *"Posse comitatus?* Well, back during the frontier days the U.S. Marshals would often use the Army as a posse to run down fugitives. It was a clear violation of the Army's constitutional duties and Congress finally passed legislation to prohibit it. Except in times of martial law the military has no legal jurisdiction over civilians. But it seems to me the Army may have forgotten that."

The mountain of testimony gathered by Senator Ervin's Constitutional Rights Subcommittee last year on military surveillance of civilians is the latest activity by Morganton's number one resident aimed at the protection of the individual against government snooping into and regulation of his private life. Within the past year or so Senator Ervin has become a figure of national—if sometimes grudging—admiration within the pages of liberal journals which once regarded him merely as a portly Southern segregationist who draped a racist social philosophy in 19th Century constitutional constructions and a steady flow of country anecdotes.

Without having changed his basic constitutional views one jot or title, and still always at the ready with a funny story from his days as a Burke County lawyer, Senator Sam today enjoys a new respect from a socio-political faction which only recently viewed him as little more than a scholarly Southern bigot.

As Author Alexander Bickel put it in an admiring article for *The New Republic,* Senator Ervin has gained "an entirely new constituency." Contrary to the usual rule of politics, the gain appears to have been registered with little attrition among the old constituency which has kept Sam Ervin in the U. S. Senate since 1954.

During the week preceding this interview the Senator was seen and heard throughout a national television network documentary dealing with the national government's encroachment upon individual liberties. A feature-length and largely complimentary article on Ervin by Robert Sherrill was carried in the February *Playboy* Magazine which appeared on the newsstands a couple of days before the Morganton interview took place. Senator Sam hadn't seen the issue until the reporter brought him a copy; the carryover section of the article was incongruously sandwiched between color cartoons of copulating couples. Not the most dignified sort of environment for a serious article about Senator Ervin and his work, but *Playboy* has a wide readership for its serious words as well as its sexy graphics. Remarked the Senator as he leafed through the publication: "I can see why this magazine makes money while a lot of others have gone bankrupt."

The emergence of Senator Ervin as a champion of the individual's constitutionally-guaranteed liberties against governmental encroachment is explained in terms of his discoveries that 1984 may be nearer than we think. In George Orwell's stark novel of governmental tyranny to the fullest power, the rulers were collectively known as Big Brother and each and every subject of the mythical nation was constantly reminded that "Big Brother is watching you." Ervin believes that a Big Brother complex began to develop within the executive branch of the Federal Government during the 1960's. And he, as Chairman of the Senate Constitutional Rights Subcommittee, is keeping his own eye firmly fixed upon Big Brother.

Although Sam Ervin's role as a dogged protector of the individual's right to freedom from unwarranted government snooping into his private affairs and control of his actions began drawing national attention within the past year or 18 months, it is a role he has been playing in the Senate for a number of years. He strenuously opposed much of the civil rights legislation which paraded through Congress during the early years of the Johnson Administration on grounds that, however desirable it might be in terms of minority group opportunities, it was not sanctioned by the Constitution.

Then he started applying the same constitutional yardstick to other groups and individuals who had not benefitted from any Great Society legislation: military personnel, Indians living on reservations, persons confined to mental hospitals in the District of Columbia. In each of those cases he authored and sponsored legislation designed to enforce their constitutional guarantees under the Bill of Rights. The Military Justice Act which he sponsored in 1968, and the Bail Reform Act which he had authored in 1966, were hailed as the most significant legal reforms in these fields since the nation's founding.

"It just occurred to me that certain other people besides blacks needed their rights protected," the Senator remembers. His yardstick of constitutional consistency caused him to join the opposition to the Nixon Administration's preventive detention and "no-knock" crime control legislation which he saw as dangerous assaults upon the guarantees of the Constitution's Fourth and Fifth Amendments. "Back where I was practicing law for a living I objected to the sheriff's breaking down a man's door looking for moonshine whiskey," Ervin observed. "And I don't like it now when Federal agents can forcibly enter a person's dwelling without warning. It violates the man's rights and it's dangerous to the agents making entry."

That same Ervin consistency saw him standing up last fall as a champion of the constitutional free press guarantees. An oft-battered target of press criticism himself, Ervin opposed efforts by the Nixon Administration to prohibit publication of the Pentagon Papers. Much as he disliked and disagreed with some material published and broadcast in the news media, the Senator told his subcommittee last October that misinformation or biased reporting "is nowhere near as dangerous as leaving to a few government officials the power to decide what can be discussed and what cannot; and when ultimate truth has been discovered and what it is."

The emergence of Sam Ervin as a national figure really began after he concentrated the attention of his subcommittee upon complaints by Federal employees about what their superiors were requiring them to say and do; and upon testimony showing that the Army was assigning intelligence agents to investigation and surveillance of civilians, many of them nationally prominent people.

"All the government should expect of its employees is honest and efficient service," the Senator commented. "Government has no right to do such things as tell employees to make talks in favor of certain policies, to promote the United Nations, to give a certain amount to the United Fund, to pressure local government into passing open occupancy laws." Bills by Ervin to prohibit these practices have passed the Senate on three occasions, but have been persistently blocked in the House.

The Army has said it no longer watches civilians but the Senator is dubious. "Neither Congress nor the public knows the full story of military surveillance and the compiling of dossiers on civilians," he said recently. "We badly need legislation to prevent future abuse of the Army's power to investigate law-abiding citizens and to control the rapid development of large computer data systems in the Federal Government which may affect the rights of citizens who deal with the government."

The essence of Big Brother could one day reside in governmental computer banks unless effective checks are imposed, the Senator believes. "Computers are essential to our society, of course. But the computer can be the most dangerous threat to freedom in our history if improperly used. The trouble with storing raw information in computers on thousands of people is that a computer can't make moral judgments. If you put garbage into a computer you get garbage out of it." So stated Senator Sam Ervin who has spent many a thoughtful hour studying the implications of electronic data processing.

Still a strong law and order man, this former Associate Justice of the North Carolina Supreme Court has sponsored legislation which would require prompt trials of defendants in Federal courts—a measure which he feels would be far more effective in combating crime than preventive detention or no-knock authority. "If every defendant in a Federal court knew he would have a speedy trial and would be punished if found guilty, I think we might see a reduction in the crime rate," Ervin observed. "The only effective way to enforce laws that I know of is to punish the people found guilty of violating them."

Even the government's long-standing anti-tobacco campaign falls by Ervin's standards into the category of unwarranted interference with individual and corporate rights. He regards the government's public attacks against tobacco as propaganda unsupported by scientific fact and the prohibitions against cigarette broadcast advertising as an erosion of press freedoms. Needless to say, this stand fails to earn him many good marks in the national press.

Nor do the Senator's continuing and vehement campaigns against habitual Federal fiscal deficits earn him many compliments in the public prints, although he regards government's casual attitude toward balanced budgets and public debt as large a threat to the nation's future as the threat of Big Brother.

"It seems to me that the leaders in Congress and the Executive Branch are taking the attitude that King Louis IV took in France in the 18th Century, knowing the country was in trouble and a revolution might result. He used to say, 'after me, the deluge.' And it seems to me that too many people in our government these days are taking the same cynical attitude toward our own future as a nation."

At age 75 the Senior Senator finds himself in wide demand as a speaker, with many of the invitations coming from college campuses. He fills as many as he can, wishes he could do more of it. But keeping an eye on Big Brother becomes ever more demanding as new evidences are uncovered by his subcommittee. The Senator's stand for the Constitution transcends partisan politics and ideology; both the Johnson and Nixon Administrations have felt his mild blue eyes boring in.

"I'm a great believer in the Hyde Park tradition in London," said Sam Ervin at his Morganton office. "Everyone should be allowed to mount his own soap box and say whatever he wants to about any subject, so long as it doesn't do harm to someone else. If we allow the government to take the Bill of Rights away from us, then we've moved into 1984."

Is there really so much danger to American freedom from its government? There are those who regard the governmental policies and actions criticized by Senator Ervin as necessary and desirable in a time of unrest and crime and cries of revolution. The Senator disagrees.

"I think it's true that a lot of people in government and outside have become afraid of freedom, believing it can be the cause of our own destruction," he asserted. "I think they're wrong. You can't turn liberty on and off like an electric lamp. Once you turn it off you may find that it can never be turned on again."

POULTRY: A GOOD BUY

Mr. ROTH. Mr. President, in the continuing battle against inflation, a great deal of attention has been directed in recent weeks to increases in the cost of food; and rightly so, for unlike other commodities, grocery items must be purchased on a regular basis. The consumer can put off buying a new car if prices are too high, or make do with the dining room furniture a little longer if prices are not right, or even do without a new suit right now if necessary; but grocery buying is generally a weekly business and the housewife knows when she reaches the end of the checkout line at the supermarket how far her grocery dollar has gone this week as compared to last week.

It is hard to believe that in this day of rising prices there is something which is actually cheaper today than it was 20 years ago—but that is true of chicken. Thanks to improved breeding and production, chicken has become the best meat buy on the market. Whole broiler-fryers which were selling for 60 cents a pound in 1953 are available today at about half the price. No other meat-type food can point to such a good record of price reduction.

Today in the Washington metropolitan area, a meal for a family of four using regular hamburger at 75 cents per pound and one-half pound per person would cost $1.50. But the same family of four could enjoy whole roasting chicken at a cost of only 78 cents. That's based on a half-pound serving per person with chicken selling for 39 cents per pound.

Choice prime rib of beef, at $1.29 per pound, would cost $5.16 for a one-pound serving for a family of four. But half-pound servings of turkey, selling for 59 cents per pound, would cost only $1.18 for a family of four.

I mentioned earlier that chicken is now selling at about half what it was selling for in 1953. But a comparison of the average U.S. retail prices of beef and frying chickens between August, 1971, and February, 1972, gives further evidence of the current economical benefits to be derived from the increased consumption of chicken. Using 1967 as a base year of 100, frying chickens decreased in price from a level of 111.7 in August 1971 to a level of 110.1 last February. The price of beef, on the other hand, was at an August 1971 level of 126.8. This figure increased to a level of 136.1 7 months later.

The value of poultry, however, is not only found in its low cost. More importantly, chicken, for instance, has proven to be the cheapest source of protein currently on the market, with the amino acids essential to growth and health. Weight watchers can be particularly fond of chicken because an average serving contains fewer calories than most other meats. Poultry provides many essential vitamins and nutrients including iron, thiamine, riboflavin, and niacin.

With today's modern production, processing, and marketing methods, chicken is available the year around—for roasting, broiling, frying, stewing, or making soups, salads, or a myriad of delightful dishes. Packaged, cut-up chicken, heat-and-serve chicken, and chicken rolls, or bars, make poultry among the most versatile and easy-to-prepare meals one can serve.

Because of seasonal production and limited supplies, "chicken on Sundays" was a common phrase which I readily recall from my boyhood days. But those days are past—today's consumers have a delectable variety of poultry products to serve any day of the week throughout the year.

Of course, I take considerable pride in the broiler-fryer chickens produced throughout the Del-Mar-Va peninsula. Well over 500 million pounds of broilers were produced in Delaware alone in 1971. This number of broilers produced placed my home State eighth in the country in total production. Considering Delaware's size, I believe it fair to say that the State

of Delaware contains the greatest concentration of broiler-growing in the country.

Those responsible for broiler-production in Delaware can justifiably boast of a well-integrated system. Our farmers raise their own stock, do their own hatching, and provide their own feed mills. Processing plants are located throughout the heart of the "Blue Hen State" in Blades, Felton, Georgetown, Laurel, Milford, Milton, and Selbyville.

At these processing plants, the poultry undergoes a rigid inspection whereby the birds must meet both State and Federal requirements of fitness. The processing plants themselves must meet strict requirements of cleanliness; they must have adequate equipment and personnel to perform at a high standard. Inspectors—either doctors of veterinary medicine or trained specialists under a veterinarian's supervision—keep constant watch over the plant, the processing operation and every chicken produced at that location. Birds found unfit for eating are removed immediately from the processing line and condemned for use as human food. Inspectors also make sure that the products are not adulterated and are truthfully labeled.

All of these precautions are taken to insure that only the highest quality poultry is placed on the market by the Delaware farmer. In a State where broiler sales account for over 50 percent of a farmer's cash sales, the men and women of the broiler industry are especially concerned with the maintenance of high-quality standards.

Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs, recently reiterated the firm intention of the President to halt spiraling food costs. I am pleased to join President Nixon and the Cost of Living Council in urging all businessmen concerned with the production and retailing of food to narrow their wide margins of profit which are severely causing strain on the family budget.

I also encourage all Americans to take advantage of the economical and nutritional benefits of poultry products. We in Delware are aware of the significant contributions being made to both the American economy and the American diet by the poultry farmer and producer. I salute their efforts and commend their products to all consumers.

FAST DISAPPEARING OCEAN MAMMALS

Mr. BENTSEN. Mr. President, more than two dozen bills and resolutions have been introduced in the 92d Congress aimed at the protection of our fast disappearing ocean mammals. I am pleased to be a cosponsor of S. 2579, which bans nearly all killing of ocean mammals and the importation of their products. Indiscriminate killing of these mammals over the years has resulted in several species being placed on the endangered species list by the U.S. Department of the Interior. The need for adequate protection of these creatures is obvious, and I hope the U.S. Congress will see fit to take prompt action to provide it for them.

Other countries as well are becoming increasingly concerned with the need to protect our disappearing wildlife. I particularly wish to commend President Luis Echeverría Alvarez of Mexico for his recent initiative in creating a sanctuary for whales, virtually the first of its kind in the world. This sanctuary is in Scammons Lagoon, an intricate waterway in the territory of Baja, Calif.; covering 250 square miles it is the prime breeding and calving ground for the gray whale. This rare mammal makes an annual round trip of 8,000 miles from its feeding grounds near the Bering Straits to the coasts of southern California and Baja, Calif., in the lagoons and estuaries of which it multiplies.

I hope that this imaginative approach to protecting our wildlife will serve as an example to the rest of the world of what a government can do to preserve these mammals which can never be replaced.

DEVELOPMENTS IN RECYCLING

Mr. MOSS. Mr. President, there is a growing awareness in the public and industry that we must come up with new, imaginative ways to solve the solid waste problem now pressing in upon us. This is a time for action, and a time for the experimentation in new processes, new materials, and new governmental policies.

The Washington Post of Sunday, March 26, 1972, contained an article by Joseph D. Whitaker that tells the story of "super-sludge" as a new material to be used for the surfacing of roadways and runways at airports. This sludge material is composed of recycled waste products, such as fly ash, crushed bottles, old rubber tires, and similar refuse.

Dulles International Airport will have a chance to display runways composed of this "super-sludge" at Transpo 1972—the U.S. International Transportation Exhibition. The Federal Highway Administration has given a grant making this possible, and should be commended for its help. I ask unanimous consent that the article be printed in the RECORD.

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

THE $700,000 PAVING PROJECT—DULLES' "SUPER-SLUDGE" LOTS

(By Joseph D. Whitaker)

They're paving some roads and parking lots at Dulles International Airport with waste materials such as fly ash, old rubber tires, burned garbage and old crushed bottles. About 120 acres will be covered with various mixtures for the U.S. International Transportation Exhibition—Transpo '72—that will open May 27.

The $700,000 experimental project sponsored by the Federal Highway Administration is designed to show that low-cost industrial and domestic wastes can successfully be substituted for more costly conventional road-building materials.

The idea comes at a time when increasing amounts of waste matter must be disposed of and some traditional sources of road building material—rock quarries and river dredgings—are under attack by environmentalists.

Fly-ash, calcium sulphate, carbonates and lime are being mixed in a huge silo to create a grayish, pasty sludge to be used to pave most of the parking areas. Eventually more than 100,000 tons of the material is to be used.

Over the last three months, huge stockpiles of the material used in the "super-sludge" mix have been stored at the Transpo '72 site.

Fly-ash, produced by coalfired power stations, is being supplied by the Potomac Electric and Power Company from plants in Dickerson, Md. Truckloads of sulphates—a byproduct of steel production—are being brought in from steel mills in Paulsboro, N.J. Iron mines in Millsville, W. Va., are providing another waste material, carbonates.

"People have been talking about ecology, pollution control and waste disposal," said Chester C. Spurgeon, managing director of Transpo '72. "But this could be the answer to some of their questions."

The use of "super-sludge" as a regular replacement for conventional soil cement could revolutionize the building of roads by making the process more economical, according to W. S. Mendenhall, FHA chief of research and development demonstration projects division.

"Most of the waste materials we are using present costly disposal problems for the factory that produces them," Mendenhall said. "If such materials could be used on a large scale to build roads, the materials could be obtained at no cost. This would solve problems for both the highway builder and the owner of the factory."

In the Transpo '72 project, Mendenhall said both the sludge and conventional materials would cost about the same to use—about 98 cents a square yard—because the wastes have to be shipped in. The use of waste materials would be more feasible in areas where the materials are easier to be obtained, he said.

Once "super-sludge" is poured in a thickness of about 5 inches it quickly stabilizes. From then on it becomes stronger and stronger, similar to concrete used to build roads in ancient Rome, Mendenhall said.

Roadways leading to and around the general parking areas will be coated with a 2-inch layer of asphalt on top of the sludge base.

On one stretch of road, workmen will mix such items as crushed disposable glass bottles, shredded car tires, and ground burned garbage in with the other sludge ingredients. Each item will go into a separate mixture and will be poured on a different length of the road to test its durability.

The firm which developed the "super-sludge" concept, G. and W. H. Corson, of Plymouth Meeting, Pa., also is experimenting with the use of the material in concrete-type blocks that could some day be used to build houses, Mendenhall said.

MARINE MAMMALS

Mr. STEVENS. Mr. President, many of the bills under consideration by this body for the protection of ocean mammals seek a 5-year moratorium on most killing of ocean mammals and on the importation of their products. While it is the contention of most Alaskans that this ban would lead to the extermination of the culture of the Alaskan Eskimo and total loss of his economic base in the villages, it is still incumbent upon this body to make a decision after a careful study of all arguments. I therefore ask unanimous consent that an article published in the Congressional Quarterly of March 18 be printed in the RECORD.

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

MARINE MAMMALS: HOUSE APPROVES 5-YEAR BAN ON KILLING

The House March 9, by a 362–10 roll-call vote, passed a bill (HR 10420), the Marine Mammal Protection Act, providing for a five-year moratorium on most killing of ocean mammals and on the importation of their products.

HR 10420 would apply to seals, sea lions, whales, porpoises, dolphins, sea otters, manatees, walruses and polar bears.

The bill also would establish a three-member Marine Mammal Commission to review, study and make recommendations for the conservation and management of ocean mammals. A permit system would be set up under the secretaries of commerce and interior.

An exception to the moratorium was granted to the tuna fishing industry, which could be given a general permit authorizing the killing of porpoises and dolphins incident to fishing operations.

Another exception would allow the capture of ocean mammals for public display in zoos or commercial marine exhibits and for scientific research purposes.

The five-year moratorium and the exceptions to it were included in one of the two amendments approved during floor debate. The other amendment would remove from the Marine Mammal Commission authority to issue permits allowing capture of mammals for display and scientific research.

Six amendments were rejected on the floor, including a proposal to transfer all authority for marine mammal protection to the Department of the Interior. Also rejected were two amendments to prohibit the killing of porpoises and dolphins incidental to tuna fishing operations after specified dates.

REFERENCES

Sea mammals fact sheet, Weekly Report p. 237, previous action, 1971 Weekly Report p. 2604.

BACKGROUND

The House Dec. 6, 1971, had refused to pass HR 10420 under suspension of the rules. Although the bill received a 199–150 majority, it was 34 votes short of the two-thirds majority required to pass a bill under suspension.

The bill was reported (H. Rept. 92–707) by the House Merchant Marine and Fisheries Committee Dec. 4. The committee held four days of hearings on ocean mammals in September 1971.

As reported by committee and turned down by the House, HR 10420 would have prohibited the granting of permits for only 60 days after enactment of the measure, rather than for the five-year period agreed to March 9.

FLOOR DEBATE

During general debate, support for the bill in the form originally reported Dec. 4 was expressed by Edward A. Garmatz (D Md.), chairman of the Merchant Marine and Fisheries Committee.

Garmatz said the bill should have been passed when it came to the floor in November 1971. "Unfortunately," he said, "the opposition to our committee's ocean mammal bill was neither normal nor rational, and it certainly was not healthy. . . . The primary opponents to this bill are not really conservationists—they are more properly referred to as 'protectionists'—and their basic position seems to be that man should leave all animals alone."

John D. Dingell (D Mich.), chairman of the Fisheries and Wildlife Conservation Subcommittee, said the central issue in the controversy was what was "best for the animals themselves"—which was "enlightened, effective management."

"Before issuing any permit for the taking of a marine mammal, the secretary must first have it proven to his satisfaction that any taking is consistent with the purposes and policies of this act," he said. "I simply do not believe that any administrator, forced to operate in that kind of goldfish bowl, can abuse the discretion that the committee has given him."

But several other members spoke in opposition to various aspects of the bill. Nick Begich (D Alaska) criticized a provision which would allow Indians, Aleuts and Eskimos to kill marine mammals for subsistence purposes, and in accordance with traditional customs, if not done primarily for commercial sale.

J. Herbert Burke (R Fla.) said the bill did not go far enough: "I feel that this measure, in its present form, will do about as much good as a band-aid on a cancer. Man's impact upon marine mammals has ranged from what might be termed malign neglect to virtual genocide. . . . All in all, the committee-approved bill is about what the commercial fishing industry and the hunters wanted."

Moratorium. An amendment was offered by Morris K. Udall (D Ariz.) to impose a five-year moratorium on the killing of ocean mammals, with some exceptions.

"We know next to nothing about the marine mammals of the world," Udall said. "The moratorium would allow us a minimal period during which we could get to really know these strange and fascinating aquatic neighbors and head off the irreparable tragedy of extinction—a tragedy some believe would be the inevitable result of present policies."

In addition to granting exceptions for tuna fishing, public display and scientific research, the Udall amendment authorized issuance of permits for the killing of Alaskan fur seals in the Pribiloff Islands, a harvest which is administered by the U.S. Commerce Department.

Also, the Udall amendment authorized importation of the skins of weaned seals for processing by firms in the United States if the skins were exported within two years. Udall pointed out that the Fouke Company of Greenville, S.C., which processes the skins of South African seals, "would be driven out of business absent limited relief from the provisions of this amendment." The Fouke Co. also had an exclusive contract with the federal government to process and sell Alaskan fur seal skins. The Udall amendment was adopted by voice vote.

PERMIT AUTHORITY

Before adopting the Udall amendment, modifications were introduced by Thomas M. Pelly (R Wash.) and by Begich. The first was adopted, the second rejected.

Pelly's amendment would take away from the Marine Mammal Commission authority to approve issuance of permits for capture of mammals for display or research. Pelly said this part of the Udall amendment "would completely vest issuance authority in an organization which is independent and completely nonaccountable to any administrative department of the federal government."

Udall accepted the amendment, which was adopted by voice vote.

ALASKAN NATIVES

Begich's amendment to the Udall amendment would have allowed Indians, Aleuts and Eskimos to kill marine mammals for production of traditional native arts and crafts for commercial sale.

Udall agreed to accept the amendment, but Dingell opposed it on the basis that the committee had not seen it in advance. Dingell also said that the Alaska Native Claims Act (HR 10367–PL 92–203) provided sufficient benefits for the state's native citizens.

Begich: "The arts and crafts industry of Alaska's natives, modest in size and in environmental impact, is the best and most appropriate cultural response to the cash economy brought to them courtesy of the white man . . . It is that part of subsistence hunting that must now be done in order to pay taxes to buy fuel oil and to pay rents. To call it 'commercial' in the harsh sense fails to understand."

Dingell: "We have tried to consider their cash needs by giving them $1-billion. . . . With the oil royalties and everything else we gave them, we have many instant millionaires in Alaska now, and I think perhaps they can give up the wholesale carving of walrus tusks. I think we have given them enough."

The Begich amendment was rejected by voice vote.

INTERIOR DEPARTMENT

Mario Biaggi (D N.Y.) offered an amendment to transfer all authority for marine mammal protection from the Department of Commerce to the Department of the Interior. Biaggi said "the Department of Commerce is charged with promoting fisheries interests. It will be most difficult for the department . . . to encourage the tuna fish industry, for example, while it must pressure the tuna fish industry to stop taking porpoises and dolphins."

Dingell said he personally was in agreement with the amendment but had to oppose it because it had been considered by the subcommittee and rejected.

The Biaggi amendment was opposed by Alton Lennon (D N.C.) who said that the National Oceanic and Atmospheric Administration, part of the Commerce Department, should continue to have the authority to look after the interests of whales, porpoises, dolphins, seals and sea lions. "Does it not make more sense . . . that the agency which is funded and created by Congress to regulate the affairs relating to the oceans should have jurisdiction over matters which are in the oceans?" Lennon asked.

Pelly also opposed the amendment on the grounds that the jurisdictional split should be maintained pending the creation of a Department of Natural Resources which had been proposed by President Nixon.

The Biaggi amendment was rejected by a 20–35 standing vote.

TUNA FISHING

Ogden R. Reid (R N.Y.) offered an amendment to prohibit after one year the use of any commercial fishing methods which killed or injured ocean mammals. Reid described how porpoises and dolphins often became entangled in the mesh of tuna nets and drowned. "I feel that the choice we have before us today is whether we are going to insist that the incidental killing of 200,000 to 400,000 porpoises per year is halted by a flat ban, or whether we are to condone the decimation of porpoises. . . . By choosing the former, we would be insisting that fishing technology come up with appropriate devices, acoustics and nets to ensure that this incidental slaughter is halted."

But Pelly opposed the amendment on the grounds that it "would have the net effect of completely destroying this country's commercial fishing industry." Pelly said: "The biological fact that the proposed amendment cannot escape is that it is not possible for a law to separate tuna from porpoise. The adoption of this amendment would result in the demise of a domestic tuna fleet which provides over 40 percent of the tuna annually processed for the U.S. market."

The Reid amendment was rejected by a 17–47 standing vote.

Biaggi offered a similar amendment which would prohibit the injury or killing of porpoises and dolphins two years after the bill went into effect, but would allow the fishing industry to seek annual delays of the ban for up to three years. The amendment also provided that regulations would be issued and federal inspectors appointed to enforce them.

But Dingell and Pelly opposed the amendment and it was rejected by voice vote.

PENALTIES

Bob Eckhardt (D Texas) offered an amendment to remove the penalties of seizure and forfeiture of vessels and equipment belonging to violators of the act. "We have a $10,000 fine for even an unintentional violation," Eckhardt said. "We have a provision for a $20,000 fine for a knowing violation. It seems to me that the additional penalty of forfeiture is unnecessary and extreme."

But Dingell argued that the forfeiture, under standard admiralty law, would not occur until after conviction.

The Eckhardt amendment was rejected by a 15–37 standing vote.

PROVISIONS

As passed by the House, HR 10420:

Title I

Declared the finding of Congress that certain marine mammals were in danger because of man's activities and that they should be protected and managed with the primary objective of maintaining the stability of the marine ecosystem and the secondary objective of maintaining an optimum sustained yield.

Phohibited killing of marine mammals on the high seas by U.S. citizens and any killing on U.S. lands or waters except as provided by international treaty.

Prohibited most possession, transportation or sale of marine mammals or their products.

Prohibited most importation of marine mammals and their products or fish caught in a manner injurious to marine mammals.

Directed the secretaries of commerce and interior to set limits on the number, kind, location, age and sex of marine mammals that could be taken, after considering population levels, international treaties, the marine ecosystem, fisheries resources and economic and technological feasibility.

Required that limitations established by the secretaries be published after opportunity for public hearings, and that they include public statements on existing population levels, expected impact of limitations and all research studies.

Authorized the issuance of permits which specified the number and kind of animals to be taken, the location and manner of taking and the permit's valid time period.

Required the secretaries to specify methods of capture, care and transportation of marine mammals taken for display or scientific research.

Directed the publication of permit applications in the *Federal Register* for comment within 30 days.

Required permit applications to prove that their taking of marine mammals would be consistent with the purposes of the legislation.

Authorized the secretary to grant public hearings on permit applications.

Authorized those opposed to permits that were issued to file petitions for review in U.S. district courts.

Established a five-year moratorium on permit issuance, with exceptions for public display, scientific research, commercial fishing, Alaskan fur sealing and weaned seal skin processing.

Set civil penalties of up to $10,000 per violation and criminal penalties of up to $20,000 or one year in prison or both, and offered rewards of up to $2,500.

Authorized seizure and forfeiture of vessels and equipment used in violation of the legislation.

Directed the secretaries of commerce and interior to enforce the measure with the help of other federal or state agencies or employees.

Granted exceptions for the taking of marine mammals by Indians, Aleuts or Eskimos if primarily for subsistence purposes and not for commercial sale.

Encouraged the secretary of state to seek international agreements for marine mammal protection and an international meeting before July 1, 1973, and to report to Congress within a year of the bill's enactment.

Forbade states to adopt their own marine mammal laws or regulations, except through cooperative agreements with the federal government.

Authorized the issuance of research grants to federal or state agencies, public or private institutions or others, and authorized the appropriation of up to $1-million per year for five years.

Authorized the appropriation of $1.5-million for each of five years for the Commerce Department, $700,000 for the first year for the Interior Department and $525,000 for each of four years thereafter.

Title II

Established a three-member Marine Mammal Commission to be appointed by the President.

Prescribed the duties of the commission to review and study all U.S. activities, existing laws, international treaties, population levels and management methods relating to marine mammals and to make recommendations for their protection and conservation.

Authorized the commission to establish a nine-member Committee of Scientific Advisers or Marine Mammals.

Required the commission to make annual reports to Congress.

Authorized the appropriation of up to $1-million per year for five years for the commission, with not less than three-fourths to be expended on research studies.

AMENDMENTS ACCEPTED

Thomas M. Pelly (R. Wash.)—Amendment to Udall amendment (*below*)—Remove from the Marine Mammal Commission authority to approve permit issuance for capture for display or scientific research, and give authority to the secretaries of commerce and interior to issue permits. Voice vote.

Morris K. Udall (D. Ariz.)—As modified by Pelly amendment (*above*)—Establish a five year moratorium on the killing or capture of ocean mammals and on the importation of their products, with certain exceptions. Voice.

AMENDMENTS REJECTED

Nick Begich (D. Alaska)—Amendments to adopted Udall amendment (*above*)—Allow the taking of marine mammals by Indians, Aleuts or Eskimos for use in production of native arts and crafts for commercial sale. Voice.

Mario Biaggi (D. N.Y.)—Transfer all authority for marine mammal protection from the Department of Commerce to the Department of the Interior. Standing vote, 20–35.

Ogden R. Reid (R N.Y.)—Prohibit the killing of porpoises and dolphins incidental to tuna fishing operations one year after the bill went into effect. Standing 17–47.

Biaggi—Prohibit the killing of porpoises and dolphins incidental to tuna fishing operations after two years, but allow industry to seek annual delays of the prohibition for up to three years. Voice.

Bob Eckhardt (D Texas)—Delete language authorizing the seizure or forfeiture of vessels and equipment engaged in unlawful taking of marine mammals. Standing, 15–37.

H. R. Gross (R, Iowa)—Delete Title II establishing a Marine Mammal Commission and a Committee of Scientific Advisers on Marine Mammals. Standing, 13–39.

FEDERAL JURORS

The House March 6, by a 316–27 roll-call vote, passed under suspension of the rules a bill (HR 2589) requiring that questions of race and occupation be answered by persons filling out federal juror's qualification forms.

(*Roll call: Vote 36, Weekly Report p. 570*)

A two-thirds majority vote (230 in this case) is required to pass a bill under suspension of the rules.

The purpose of the bill was to assure nondiscrimination in jury selection.

REFERENCE

House hearings, 1971 Weekly Report p. 2394

HOUSE ACTION

The Judiciary Committee unanimously reported the bill Feb. 29 (H Rept 92–870).

There was no floor debate on the bill. Richard H. Poff (R Va.), a Judiciary Committee member, said the fact that persons filling out the form had the option, under the Jury Selection and Service Act of 1968, of not stating their race and occupation meant it was difficult to guarantee that juries would represent a fair cross section of the population—as required by the 1968 act.

The bill had the backing of the Justice Department, Civil Rights Commission and Administrative Office of the U.S. Courts.

Robert McClory (R Ill.) assured members that the new information required by HR 2589 was needed solely to enforce nondiscrimination in jury selection.

THE BRITISH PROPOSALS FOR NORTHERN IRELAND

Mr. RIBICOFF. Mr. President, last Friday Prime Minister Heath of Great Britain announced in the House of Commons that the British Government would be assuming all legislative and executive powers for Northern Ireland for a 1-year period. As one deeply concerned over the continuing tragedy in Ulster, I welcome this long-awaited British initiative. I hope it will put an end to the mounting violence and killing there. But in the long run these proposals are inadequate. I agree with Mr. Heath's statement that these proposals "do not in themselves constitute a lasting solution to the problems of Northern Ireland."

As soon as word of the new British proposals was reported in the media, I joined with the Senator from Massachusetts (Mr. KENNEDY), an original cosponsor of Senate Resolution 180, and Representative CAREY, who submitted a similar resolution in the other body, in issuing a statement.

I ask unanimous consent to have printed in the RECORD the text of our statement; the British Information Service's text of Mr. Heath's announcement, and my own testimony and that of Senator EDWARD KENNEDY on Northern Ireland before the House Foreign Affairs Committee on February 28, 1972.

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

JOINT STATEMENT BY SENATOR ABE RIBICOFF, SENATOR EDWARD M. KENNEDY, AND CONGRESSMAN HUGH CAREY REGARDING THE NEW BRITISH PROPOSALS FOR NORTHERN IRELAND

We are gratified over reports that the British Government has finally indicated it would take some positive action with regard to Northern Ireland. This follows a long period of delay during which there was a tragic escalation of the death and destruction.

In suspending the Stormont Parliament and taking over direct rule, including the function of security, and in proposing to phase out the interment policy, Prime Minister Heath is following two of the recommendations set forth in our Senate Resolution 180 introduced last October.

We welcome these proposed actions by the government of the United Kingdom. But more remains to be done if the violence and injustice in Ulster are to end.

The announced "phasing out" of internment should be accomplished without delay and the 800 men held without trial and without charges against them should be released as soon as possible.

We hope that the measures announced will be a prelude to carrying out the other four points in our Resolution.

"Full respect for the civil rights of all the people of Northern Ireland, and the termination of all political, social, economic and religious discrimination;

"Implementation of the reforms promised by the Government of the United Kingdom since 1968, including reforms in the fields of law enforcement, housing, employment and voting rights;

"Withdrawal of all British forces from Northern Ireland and the institution of law enforcement and criminal justice under local control acceptable to all parties; and

"Convening of all interested parties for the purpose of accomplishing the unification of Ireland."

We are especially heartened by the apparent determination of Prime Minister Heath to press ahead with this important new initiative, in the face of what seems to be the utterly intransigent position of Prime Minister Faulkner and his government. Now, at last, Britain has resolved to move forward, and Prime Minister Heath has our hopes and prayers that the new policy will bring an end to the killing and violence.

TESTIMONY OF MR. HEATH

With permission, Mr. Speaker, I will now make a statement about Northern Ireland.

This House has debated the affairs of Northern Ireland on many occasions in recent months. All of us in this House deplore the grievous suffering inflicted upon its innocent people by the continuing campaign of lawless terrorism and we admire the steadfastness with which they have attempted to sustain the life of the province.

Throughout this period Her Majesty's Government have maintained close consultation with the Northern Ireland Government. We have made repeated attempts with all concerned to find an agreed solution to the problems of Northern Ireland.

At a meeting which my Rt. Hon. Friends, the Home Secretary, the Lord President, the Defense Secretary and I had with the Prime Minister and the Deputy Prime Minister of Northern Ireland on March 22, we made it plain that in the British Government's view new and more radical measures were necessary if there was to be any prospect of breaking out of this deadlock.

We made three main proposals.

First, in the hope of taking the border out of the day-to-day political scene, and as a reassurance that there would be no change in the border without the consent of a majority of the people of Northern Ireland, we proposed periodic plebiscites on this issue.

Second, we proposed that a start should be made on phasing out internment.

Third, we were concerned about the present division of responsibility for law and order between Belfast and Westminster, whereby control remains largely with the Northern Ireland Government while operational responsibility rests mainly with the British Army and therefore with the United Kingdom Government. This responsibility is not merely domestic, it is a matter of international concern as well.

We were also well aware that the control of law and order was a decisive issue in Northern Ireland, and we thought that there would be advantage in seeking to take it out of domestic politics in Northern Ireland, at any rate for a time. We therefore told the Prime Minister and Deputy Prime Minister of Northern Ireland that we had reached the conclusion that responsibility for law and order in Northern Ireland should be transferred to Westminster.

The first two of our proposals were in principle acceptable to the Northern Ireland Government. But Mr. Faulkner told us that his Government could not accept proposals for the transfer of responsibility for law and order from Stormont to Westminster. At a further meeting yesterday evening he confirmed, after having consulted his Cabinet, that this was their unanimous view, and that if any such proposal were implemented, it would entail the resignation of the Northern Ireland Government.

The United Kingdom Government remain of the view that the transfer of this responsibility to Westminster is an indispensable condition for progress in finding a political solution in Northern Ireland. The Northern Ireland Government's decision therefore leaves them with no alternative to assuming full and direct responsibility for the administration of Northern Ireland, until a political solution to the problems of the province can be worked out in consultation with all those concerned.

Parliament will therefore be invited to pass before Easter a measure transferring all legislative and executive powers now vested in the Northern Ireland Parliament and Government to the United Kingdom Parliament and a United Kingdom Minister. This provision will expire after one year unless this Parliament resolves otherwise. The Parliament of Northern Ireland would stand prorogued but would not be dissolved.

The present Prime Minister of Northern Ireland has agreed to continue in office until this legislation is passed.

The increased burden which this transfer of responsibilities will entail means that it will no longer be possible for my Rt. Hon. Friend the Home Secretary to discharge these duties in addition to his many other responsibilities. A new office of Secretary of State for Northern Ireland is therefore being created. My Rt. Hon. Friend the Lord President is to be appointed to this office, together with the necessary junior Ministers. He will be empowered by the new legislation to appoint a Commission of persons resident in Northern Ireland to advise and assist him in the discharge of his duties. It will be our objective to invite to serve on this Commission a body of persons fully representative of opinion in Northern Ireland.

Her Majesty's Government, having assumed direct responsibility for law and order in Northern Ireland, will be no less concerned than the Government at Stormont has been to overcome terrorism and bring violence to an end. We shall do all we can to protect life and property in a part of the United Kingdom which is no less our responsibility than any other area of Great Britain.

As long as active terrorism persists and bombings and shootings continue, and until respect for law and a normal situation of order have been restored throughout the province, we must retain the power to arrest and intern those who there is good reason to believe are actively involved in terrorism and violence.

But a reduction of tension is the essential first step in the process of reconciliation. We believe that that requires that we should make a start in the process of bringing internment to an end.

We intend within the next few weeks to set free, subject to safeguards where appropriate, those internees whose release is no longer thought likely to involve an unacceptable risk to security. The Secretary of State for Northern Ireland will establish a procedure to review each case personally.

If the measures which we have taken lead to a reduction in terrorist activity, it will be possible to consider further releases, but this must depend on a clearly established improvement in the security situation.

Thus in the matter of internment, as in the next matter to which I shall refer, we are giving effect to a proposal which we put to the Northern Ireland Government and which in principle they accepted.

This Government, and its predecessors, have given solemn and repeated assurances that the position of Northern Ireland as part of the United Kingdom will not be changed without the consent of the people of Northern Ireland. We have decided that it would be appropriate to arrange for the views of the people of Northern Ireland to be made known on this question from time to time. We therefore propose in due course to invite Parliament to provide for a system of regular plebiscites in Northern Ireland about the border, the first to be held as soon as practicable in the near future and others at intervals of a substantial period of years thereafter.

These plebiscites will be in addition to, and not in substitution for, the provisions in the Ireland Act, 1949, which require the consent of the Northern Ireland Parliament to any change in the border. This position is not prejudiced by the temporary prorogation of that Parliament.

We hope that this arrangement, while leaving open the possibility of a change in the status of the province if the majority so wish, will both confirm that no such change will be made without their consent, and provide, in the intervals between plebiscites, a greater measure of stability in the political life of Northern Ireland.

These are our immediate proposals. But they do not in themselves constitute a lasting solution for the problems of Northern Ireland. We remain determined to find means of ensuring for the minority as well as the majority community an active, permanent and guaranteed role in the life and public affairs of the province.

Our immediate proposals are put forward in an endeavor so to change the climate of political opinion in Northern Ireland that discussions can be resumed in an effort to reach agreement on a new way forward to this end. It is our intention, as soon as circumstances permit, to promote the necessary consultations about the future structure of government in Northern Ireland.

Meanwhile Her Majesty's Government will continue to give high priority to the rehabilitation of the economic life of the province.

"I would like to pay tribute to the determination with which the Prime Minister of Northern Ireland and his Government have sought to overcome the difficulties which have beset the province, and the House will wish to acknowledge the spirit in which he has agreed to remain in office until our legislation has been enacted. We greatly regret that we were unable in the end to reach agreement with him. In the last resort, however, responsibility rests with the United Kingdom Government and Parliament, and Her Majesty's Government would be abdicating that responsibility if in this critical situation we did not take the action which we beleved to be right."

STATEMENT BY SENATOR ABE RIBICOFF

I am pleased to appear before this Committee today, on which I served during my years in the House of Representatives. I would like to commend you, Mr. Chairman, for having the wisdom and compassion to conduct hearings on the tragic situation in Northern Ireland—an issue which has been very much neglected by this country's leaders.

Last October 20, I introduced Senate Resolution 180, with the cosponsorship of Senator Edward Kennedy, who is with me here today. On the same day this resolution was introduced in the House by Congressman Hugh Carey of New York as H. Res. 653. More than 50 House members have cosponsored this Resolution.

Introduction of our resolution created quite a stir. Much of the editorial criticism did not deal with the substance of this legislation, but with the propriety and motives of the United States Senators speaking out forcefully on this issue. This genuinely puzzles and disturbs me.

If it is proper for American public officials to denounce discrimination against blacks in South Africa or the massacre of Bengalis in East Pakistan, or the mistreatment of Jews in the Soviet Union, what is so surprising if a United States Senator speaks out against the repression and discrimination which has taken place and is still taking place each day in Northern Ireland and which has resulted in the deaths of hundreds of people?

Decent men everywhere must protest bigotry and discrimination wherever it exists. The evils of racial and religious intolerance are just as abhorrent whether practiced in Pretoria, Leningrad, or in Belfast.

No nation should be immune from criticism by the world community for acts committed on its behalf. While I can appreciate Great Britain's dilemma in dealing with the problems of Northern Ireland, the pacification tactics now being used in Northern Ireland, the loss of civil liberties, and detention without trial only aggravate an already difficult situation.

The Vietnamization of Ulster by British troops is not the solution to the festering problems of Northern Ireland. Last November I warned that Ulster could become Britain's Vietnam. The bloody events in Londonderry have unfortunately borne out this dire prediction.

The time is now long past when promises of reforms, and half-way measures, are sufficient. More of the same can only guarantee future conflict and tragedy. Britain must face up to the sad realities it has helped create by its decades of neglect.

In introducing Senate Resolution 180, I tried to address myself to the basic unresolved issues as I saw them, and urged our government to press their implementation.

These are the actions called for in the Resolution:

1. Termination of the current interment policy and the simultaneous release of all persons detained thereunder.

2. Full respect for the civil rights of all the people of Northern Ireland, and the termination of all political, social, economic and religious discrimination.

3. Implementation of the reforms promised by the Government of the United Kingdom since 1968, including reforms in the fields of law enforcement, housing, employment, and voting rights.

4. Dissolution of the Parliament of Northern Ireland.

5. Withdrawal of all British forces from Northern Ireland, and the institution of law enforcement and criminal justice under local control acceptable to all parties.

6. Convening of all interested parties for the purposes of accomplishing the unification of Ireland.

Since introduction of this resolution, the leader of the British Labor Party, Harold Wilson, has called for talks on unification. Dissolution of the Stormont Parliament is now being considered a distinct possibility. What seemed to some critics as extreme last October, does not seem so unreasonable today. But perhaps the most revealing evidence as to the distance covered since October in validating the actions called for in S. Res. 180, was the secret peace efforts by Dr. John O'Connell, a member of the Irish Parliament. I am sure you will hear more about this attempt in the course of these hearings, but from the information available to me, it appears that tacit agreement was reached late last month between Catholic and Protestant leadership groups to arrange a ceasefire based on the following points:

1. Amnesty for all political prisoners.

2. The end of internment.

3. The immediate withdrawal of the British Army to barracks.

4. The complete restructuring of the Stormont government along democratic lines.

5. A declaration of intent by the British on the future of Ireland.

The British Home Office rejected this peace package—and two days later thirteen men lay dead in the streets of Londonderry.

I called attention to this matter in the Senate on February 22 when I inserted a column that appeared in the New York Post on this abortive peace effort.

What is needed is more courage by all parties concerned to face up to the underlying causes of the violence. Writing in the *New Statesman* a few months ago, Paul Johnson summed up Britain's choice this way: "In Ireland over the centuries we have tried every possible formula: direct rule, indirect rule, genocide, apartheid, puppet parliaments, real parliaments, martial law, civil law, colonization, land reform, partition. Nothing has worked. The only solution we have not tried is absolute and unconditional withdrawal."

Now is the time for boldness, rather than timidity on the part of the British government—and bold, rather than timid solutions.

It seems clear that as long as Britain refuses to face the facts when it comes to Northern Ireland, there will never be peace. The British genius for politics seems to disappear when it comes to Ireland.

In their hearts most Britons know that the Six Counties of Northern Ireland are not part of Britain. Although their present leadership is not yet ready to accept this fact, they too must eventually yield to the compelling conclusion that peace cannot be enforced by British bayonets. Nor can Britain continue to claim any moral justification for its actions as long as men are imprisoned without trial, and people shot down in the streets.

Senate Resolution 180 points the way toward policies the United States should support at the highest levels to bring justice and peace to Northern Ireland. This resolution does not presume to dictate a solution. But it does express the dimensions of the problem and sets the conditions for a long-term settlement consistent with the realities of the situation.

The hearings beginning today can make a great contribution toward illuminating this entire subject. This is a subject of great interest and concern to many Americans, and I hope it will prick the consciences of many more. No simple solutions exist for a problem as difficult as this one. But, by asking hard questions and seeking greater knowledge, this Committee can make a valuable contribution to the quest for a new future for all the people of Northern Ireland.

TESTIMONY OF SENATOR EDWARD M. KENNEDY

Mr. Chairman, I am honored to have the opportunity to appear before you and the other members of the Subcommittee this morning as you begin these important hearings on the crisis in Northern Ireland.

The long and tragic Irish history is familiar to almost all Americans. For centuries, going back even beyond the settlement of the American colonies, Ireland has endured killing and violence, religious conflict and civil war. For hundreds of years, Ireland has seemed an incurable and interminable plague on Britain, destined to bring constant turmoil to unending generations of British and Irish people and their leaders.

We know that our own century has seen its full share of the terrible death and destruction brought by Britain's inability to deal fairly and justly with the people of Ireland. Half a century ago, the world witnessed the traumatic upheaval and bloodshed that gave birth to the cruel experiment of partition. Now, a new chapter of violence and terror is being written in the history of Ireland, written on the front pages of every newspaper in the world, written in the blood of a new generation of Irish men and women and children. And once again, the people of Ireland are back at the forefront of history's greatest movement. They have joined the search in earnest for the only goal that really matters to people on earth, the search for which countless millions have died since history began, the search for human freedom and for liberty under God.

There are those who say that America should stand silent now in the face of the daily killing and brutality that is taking place in Northern Ireland, just as America stood silent over Bangladesh in the face of weeks and months of some of the worst cruelty and repression in the history of the world.

I do not agree, and I do not think that most Americans agree. Our duty, our heritage, as citizens in a nation that has been the star of liberty in the world for two centuries, require us to speak out. Were I neither Catholic nor of Irish heritage, I would feel compelled to protest against the killing and violence in Northern Ireland, just as I have protested at other times in my years in the Senate against the killing and violence in other parts of the world, in areas like Vietnam, Biafra, the Middle East, and Bangladesh.

The rising concern in Congress and the nation today over the violence in Ulster is a bright new chapter in the long and distinguished record of America's concern for human rights and equal justice in Ireland. Two hundred years ago, the Irish played a major role in securing the independence of the American colonies, a role acknowledged often by George Washington and our other great early patriots. And so, it was natural, during the following century, that the Irish struggle for their own self-government attracted wide sympathy and support in the new American nation.

Throughout our history, and especially in periods of intensifying violence in Ireland, Resolutions have been introduced in both Houses of Congress supporting the cause of Irish freedom. The platforms of both the Democratic and Republican parties in 1888 gave strong encouragement to the historic Home Rule campaign for Ireland led by Gladstone and Parnell at the time. Later, in the violence surrounding the Easter Rebellion in 1916 and the subsequent guerrilla war, Congress led the way in urging Woodrow Wilson to use the good offices of the United States to ease the crisis. Responding to the view of Congress and an American public outraged by the violence and brutality of that day, President Wilson took frequent and substantial steps to urge the Government of Britain to end the violence and achieve a peaceful settlement.

Perhaps the high water mark of American concern in the Twenties was the formation of the prestigious Committee of One Hundred Fifty on Conditions in Ireland, a private group of distinguished Americans established by the New York *Nation* to investigate the situation in Ireland at the height of the violence fifty years ago. From its members, the Committee elected a smaller Commission to conduct a public inquiry, led by Jane Addams, the famous sociologist of Hull House in Chicago, Senator George Norris of Nebraska, and Senator David Walsh of Massachusetts, a man whose Senate seat I hold today.

The Commission held 14 days of public hearings in Washington in the winter of 1920–21. It heard 41 witnesses, almost half of whom had come from Ireland to tell first hand about the violence and repression. The hearings and the Commission's subsequent report had enormous impact in mobilizing American public opinion. The vivid descriptions of cruelty and violence brought home to people throughout the country the awful horror of events in Ireland, and were an im-

portant influence leading toward the subsequent settlement of the conflict. As the Manchester Guardian commented in England at the time:

"One can only read the report with a kind of helpless rage. A few leaders in Britain have landed us in the dock, without a defense, before the conscience of mankind."

And so, these committee hearings today follow in a long line of important precedents demonstrating the concern of Congress and the nation for the cause of Irish freedom. The United States has a role to play, and I commend the members of this Subcommittee for acting now to bring the situation in Northern Ireland to the attention of the American people.

In light of these important precedents, it is fair to ask, why is the Administration still so silent over Ulster? Why does it abdicate its responsibility to let the official voice of America speak out to end the killing? A few weeks ago, in the controversy over Britain's base on Malta, America was not so silent. We did not hesitate to intervene. The Administration was quick to prod the British then, when a few square miles of an obsolete island base of no military significance were at stake. Why is it so slow to act on Ulster now, where basic human rights and the lives of innocent people are in the balance?

Indeed, if one is needed, the Administration could easily find a military rationale for action on the Ulster issue. We have a Naval Communications Station in Northern Ireland today that employs 300 U.S. Navy personnel and 150 Ulster citizens. It is located on the outskirts of Londonderry, near the Bogside, so that the potential for its disruption by the violence is all too clear. In addition, the 14,000 British troops now tied down in Ulster could be of obvious value in our effort to reduce American troops in NATO through replacement by European forces.

Moreover, as Dr. Patrick Hillery succinctly put it on his recent visit to Washington, there could be no more gross intervention in the affairs of Ireland than the presence of British troops in Ulster. And, as we know, Britain has never been reticent to intervene on American issues. Indeed, the United States today would be partitioned into separate nations, North and South, if Britain had had her way in our Civil War a century ago.

More important on the issue of intervention, Ulster cannot fairly be called the internal affair of Britain. Not a day goes by without new evidence of the deep involvement of the Republic of Ireland in the crisis—a separate and independent nation whose affairs and future are intimately bound up with the solution of the Ulster issue. We sent the aircraft carrier *Enterprise* to the Indian Ocean last December, and we intervened in other ways to try to tilt the balance between India and Pakistan, two nations with whom we have had long and friendly ties. But by some cruel irony today, we are unwilling even to make our good offices available to mediate a crisis over Ulster that involves two of our closest friends, Britain and Ireland.

In sum, America can play a useful and entirely proper role on Ulster, if only we have leaders with the compassion to act and the wisdom to see the way. There is ample precedent in history, law and logic for us to make our good offices available, and I hope that we shall be equal to the task.

That is why I welcome these hearings today. It is long past time for the Congress of the United States to go on record again, to take our stand on Ulster, to lend our voice to the effort to rally the conscience of the world to the cause of peace and liberty. And so I hope that this committee will consider the proposals before it fully, and report a measure that can bring a new call for reason and compassion on the Irish issue, and thereby move us farther along the road to peace.

The measure that I favor is Senate Resolution 180, which I cosponsored with Senator Abe Ribicoff of Connecticut in the Senate last October, and which Congressman Hugh Carey of New York introduced on the same day in the House. Briefly, our Resolution contains a number of principal provisions that I believe deserve immediate implementation.

AN END TO INTERNMENT

First, there must be an end to the cruel and repressive policy of internment. More than six months have passed since internment was adopted, and the soaring daily toll of bloodshed, bullets, and bombing in Ulster is a continuing awful reminder of how wrong that policy was at its inception, how wrong it is today, and how wrong it would be to allow it to continue.

The daily headlines tell us that Britain has done to Ulster, but we are only just beginning to realize what Ulster has done to Britain. It is fair to say, I think, that the launching of internment has brought British justice to her knees. Only last Wednesday, we witnessed the sordid spectacle of the British Parliament in London, sitting in the darkest hours of the night, steamrollered into rushing midnight legislation into law to reverse a decision by the High Court of Northern Ireland earlier that day, holding that British troops in Ulster had exceeded their authority under the constitution in carrying out their arrest, internment, and other orders.

Day after day, week after week, month after month, the nation that gave Magna Carta and Habeas Corpus and Due Process to the world imprisons hundreds of innocent citizens of Northern Ireland, without warrant, charge or trial, often on evidence of the rankest hearsay and deception, on grounds so spurious, so obsolete, and so discriminatory against the religious minority that they would be laughable, if the results were not so calamitous for the peace and people of Northern Ireland.

The notion of detention without trial is an abomination to democratic nations throughout the world, and it ought to be anathema to the British Government. Of all the great traditions of American liberty, we are proudest, perhaps, of the tradition of Anglo-Saxon law and justice, handed down to us from the pillars of British jurisprudence. And yet, by an historic irony, a far less drastic policy of preventive detention in the United States was instituted in the District of Columbia in recent years, but only after months of bitter debate in Congress, and then only with safeguards to prevent the worst abuses. By contrast, Britain's far more outrageous internment policy in Ulster was launched in the dead of night last August, without advance debate in Parliament, a quid pro quo, they say, for Brian Faulkner's agreement to ban the Orange marches. The decision was made without any notice at all, except the knock on the door in the dead of night in hundreds of Ulster homes, with the victims chosen as though by some cruel and irrational lottery and hauled away to places of detention that bore the hallmarks of concentration camps.

The Protestants in Northern Ireland are fond of saying that Belfast is as British as Birmingham or Bristol, but does anyone doubt that if they tried to launch internment in Britain today, the Government itself would fall?

And then, compounding the crime of internment, we saw the early reports of how the prisoners were treated in the camps. We read the reports of torture in the camps with horror, as they described the efforts of British intelligence to learn the secrets of the IPA by methods no civilized people can countenance.

On the heels of the first reports of torture we heard the outraged British denials. But many of the worst fears were confirmed in all but name by the report of the Compton Inquiry. Yes, said the Compton report, the prisoners were deprived of food and sleep. Yes, said the Report, the prisoners were spread-eagled against a wall for up to 48 hours at a time. Yes, the prisoners were shrouded in heavy black hoods, to induce a sense of desperate isolation. Yes, they were forced to suffer through the intense loud hissing noise of machines designed to surpass human endurance.

Again and again, the Compton Report found the immoral and inhuman facts of torture. Yet, it whitewashed their meaning by Alice-in-Wonderland logic, by obscure and hypocritical phrases that denied brutality and spoke only of "ill treatment" and "deep interrogation," and by rhetoric that sought to justify obviously barbarous means by resort to a higher end.

Over forty years ago, the distinguished American jurist, Louis Brandeis, dealt with the heart of the Compton argument in these words:

"Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution."

A generation later, in one of the great passages of British law, Lord Atkin stated the relevant principle clearly in his famous opinion in *Liversidge* v. *Anderson*, in words directly applicable to the logic of the Compton Report and its attempt to blur the difference between torture and "ill treatment":

"I know of only one authority," said Lord Atkin, "which might justify the suggested method of construction: 'When I use a word,' Humpty Dumpty said in a rather scornful tone, 'It means just what I choose it to mean, neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master—that's all.' "

No nation that calls itself a democracy can justify a policy of internment for its citizens. And so the first step I urge Britain to take at once on Ulster is to end the police state policy of internment, and thereby bring back to Ulster the evenhanded justice for which Britain has always been renowned.

WITHDRAWAL OF BRITISH TROOPS

The second major element of our Congressional Resolution is the call for the withdrawal of British forces from Northern Ireland, and the institution of appropriate procedures for law enforcement and criminal justice under local control acceptable to all the parties.

This provision of our Resolution produced substantial controversy when we introduced it last October. But today, as the unending killing and violence continue, it is also a provision that, I feel, has been vindicated by subsequent events. At Londonderry on Bloody Sunday last month, thirteen Ulster Catholics, participants in a civil rights demonstration, were killed by gunfire from a battalion of British paratroops. In light of that appalling massacre, can anyone now deny that the presence of British troops in Ulster is compounding the violence instead of contributing to peace?

To be sure, when the troops arrived in 1969, they were welcomed as protectors by the Catholic minority in many parts of Northern Ireland. But in 1972 the affection

has turned to hate, the protection has turned to violence. The British army has now become the ominous representative of Unionist tyranny, the symbol of Protestant supremacy and oppression in Ulster.

As we know from first hand experience in the United States, military forces are not trained police. They do not know how to keep the peace on a continuing daily basis. Inevitably, their presence becomes a constant irritant to the local population. On several tragic occasions in the Sixties, President Johnson was obliged to order Federal troops into American cities to maintain law and order. But always, whether in Detroit or Baltimore, in Chicago or Washington, D.C., the troops were deployed to deal with a sudden crisis, and they were removed as soon as the emergency was over and the local peace had been restored.

Today, the British troops in Ulster have become an army of occupation instead of a peace-keeping force, and the explanation is not far to seek. For months, the Army weapons searches were aimed at the Catholic homes, but they never searched the Protestants. The Army helps to maintain the internment policy, but of the hundreds who have been detained, there has never been a Protestant.

In short, thanks in large part to the British military presence, life for the minority in Ulster today is one long nightmare of sudden arrest, of house-to-house searches, doors broken down, and furniture smashed. It is a life of the smell of riot gas in the air, bruises from military batons, and wounds from rubber bullets or more deadly bullets. It is a life of barbed wire roadblocks in the alleys and armored Saracens racing through the streets. In the midst of all the terror, it is small wonder that the question they ask in Ulster today is one that cries, "Is there a life before death?"

If any hope at all remained that the Catholic population in Northern Ireland had not yet turned irrevocably against the British troops, if any hope remained that the Army might again become a helpful presence in Ulster, that hope was destroyed by the escalating military violence that culminated in the wanton killings of Bloody Sunday at Londonderry—killings that recalled other cruel and bloody days in British history, like the massacres in the Gordon Riots, and at Amritstar and Peterloo and Dublin.

And now, just as the injustice of internment was compounded by the torture of the men imprisoned, so the slaughter at Londonderry is being compounded by the arbitrary limits on the scope of the inquiry being carried out by Lord Widgery. Just as Ulster is Britain's Vietnam, so Londonderry is Britain's My Lai, and the killings on Bloody Sunday deserve the widest and fullest investigation, in an inquiry capable of insuring that such a tragedy will not recur.

Cardinal Conway's medical observer at the post-mortems on the victims has already reported that many of those who died were shot in the back while running away. We also know, for example, that long before the events of Bloody Sunday, the paratroops had earned a reputation for unnecessary brutality in troubled Catholic areas. Calls were raised, even by other Army units in Ulster, to withdraw the Parachute Regiment before a tragedy occurred.

Now, the tragedy has happened, and the people deserve to know the facts through a full and fair investigation. Yet, the inquiry by Lord Widgery has the hallmarks of our own narrow and ineffective investigation of My Lai. It is limited in time to the few moments between the beginning of the violence at the demonstration and the end of the shooting by the troops. It is limited in space to the streets of the Bogside, where the killings took place. Just as at My Lai, there will perhaps be microscopic scrutiny of the soldiers at the scene, but the generals will go free.

Such limits can insure only one result—that Lord Widgery's report will not and cannot be the full account. And so, I hope that, while time remains, Britain may yet act to expand the scope of the inquiry, so that at last, in this tragic new chapter in the history of Irish bloodshed, the people will know that justice has been done.

The events of Bloody Sunday were a watershed for many who have now begun to advocate the withdrawal of British troops as an essential step toward restoring peace in Ulster. Dr. Conor Cruise O'Brien, for example, whose views against troop withdrawal were widely quoted when we introduced our Congressional Resolution last fall, is now a convert to the cause of such withdrawal.

Yet, just as the British Government blindly argues that it cannot end internment because it would mean the return of the gunmen to the streets, so the Government also argues that it cannot withdraw the troops because of the bloodbath that would follow. And so, for months, we have had a policy that condemns hundreds of innocent men and women and children to die in the streets of Londonderry and Belfast and the other cities, towns and villages of Northern Ireland, because the Governments in London and Belfast fear that even more may die in the future if the policy is changed. In other words, to prevent some very hypothetical bloodbaths of tomorrow, the leaders of Britain and Northern Ireland seek to justify the very real bloodbaths of today.

I believe that policy is wrong, and that the withdrawal of troops from Ulster is the most important single step that can now be taken by Britain to reverse the failure of its Ulster policy. It is the most realistic step that can be taken to put Ulster on the road to peace and a solution to the crisis. Only by removing the cruel and constant and continuing irritation of British troops can we buy the time we need to do all the other things that must be done to extinguish the flames of hate and terror in Northern Ireland.

As our Congressional Resolution makes clear, the withdrawal of British troops does not mean that the people of Ulster will be without adequate procedures for the enforcement of law and order and the administration of criminal justice. I believe that entirely appropriate manpower and machinery to keep the peace can be established by the local population, with representation and procedures that are fair to the Protestant majority and the Catholic minority alike.

Our resolution would also be entirely consistent with the use of other peacekeeping methods, such as an international peace force under the auspices of the United Nations. The essential point is that some alternative must be found, and found now, to the presence of British troops if there is to be any hope of an early end to the killing and violence. As British history in general, and the history of Britain in Ireland in particular, make clear, no amount of outside force can keep the peace for long in Ulster, if the forces of law and order are too closely identified with brutality and oppression in the eyes of a significant part of the population. The bloody impasse in Northern Ireland today can be broken only by a clear commitment to British troop withdrawal, and that, I hope, will be the essence of whatever new initiative that Britain is rumored to be planning.

One more point should be made on the question of troop withdrawal. For nearly a hundred years, ever since Lord Randolph Churchill played the abominable Orange Card against Gladstone in the nineteenth century, British policy toward Ireland has been paralyzed by fear that the Protestants of Ulster will fight to the death to preserve their British tie. Whatever the reality of such fears a hundred years ago—or even at the time of the Home Rule debate before World War I or the partition in the Twenties—I believe those fears are a myth today, and the lesson of recent Ulster history tells us why.

We know that the extremists of the IRA failed to capture the hearts and minds of the Catholic minority in their brutal campaign of 1955–62. They have succeeded now, but only because the peculiar blindness of the Ulster Protestant leadership makes it totally resistant to the movement for civil rights and the demands of the Catholic minority for legitimate reforms. If the Catholics of the Republic of Ireland demonstrate their willingness and ability to protect the political, economic, and social rights of the Ulster Protestants in a united Ireland, the extremists on the Protestant side in the North will never succeed in any campaign of violence designed to play the Orange Card today.

Thanks to the impetus of their new membership in the Common Market, basic change is already well under way for both Britain and Ireland in modern Europe. That is why I strongly hope that the Republic of Ireland will now begin the process, as Prime Minister Lynch has so eloquently suggested, for genuine constitutional reform on all the great issues that divide the North and South, so that Protestants and Catholics alike may see the most rapid and dramatic progress possible toward the reconciliation we know must come.

In sum, I do not believe that the majority of Ulster Protestants are prepared to plunge their homeland into civil war to preserve the British tie. Ulster is not about to commit suicide when the British troops withdraw, and the sooner Britain learns that lesson, the sooner there will be peace in Ireland.

DISSOLUTION OF STORMONT

The third major aspect of our Congressional Resolution is the call for the dissolution of Stormont, the Parliament of Northern Island, and the institution of direct rule of Ulster from Westminster, the Parliament of Great Britain. So long as Ulster is ruled by Britain, it makes no sense to interpose the additional layer of Stormont between the people and their government. No other part of Great Britain lives today under this sort of arbitrary constitutional device, and there is no reason why the people of Ulster must endure it.

Moreover, apart from the presence of British troops, there is no more obvious symbol of the half century of massive tyranny and injustice in Ulster than the Parliament at Stormont. Throughout its history, the paramount function of Stormont has been as a tool for the oppression of the minority. In recent months, since the beginning of internment, Stormont has failed to function as an effective legislature, because the representatives of the minority have refused to participate any longer in the parliamentary charade the Unionists wish to play. Stormont is now defunct in all but name, and it is time for Britain to deliver the coup de grace. And when that happens, all the people of Ulster, Protestant and Catholic alike, will be closer to the peace they want.

UNIFICATION OF IRELAND

The fourth major aspect of our Congressional Resolution is the call for a conference of all the parties to prepare the way for the unification of Ireland. For countless generations, Irish martyrs have spilled their blood for the cause of freedom for all of Ireland, and the momentum for unification now is much too great to be denied. The other reforms I have urged are important short-run steps, but unification is the only step that can secure the permanent peace that Ireland has sought throughout her history.

The Prime Minister complains about Amer-

ican misunderstanding of Britain over Ireland. In a weekend interview, he says that unity for Ireland has no more historical or logical justification than the absorption of Portugal by Spain. Surely, that comment shows where the misunderstanding really lies. It is a gratuitous insult to millions of Irish, Spanish, and Portuguese people alike, a remark that shows a surprising lack of history and logic in a leader of Great Britain.

There are those who say that some middle ground for Ulster is still a possibility, that unification is not the only road to peace. The rumored new British initiative, they say, may propose a reconstituted Stormont, with fresh and more effective assurances of adequate representation for the minority.

To me, such proposals would be just another example of years of British blindness and delay toward Ulster. With Ireland exhausted by civil war in the 1920's, partition worked for forty years, but it cannot work today. Perhaps, even a few years ago, in the early period of the civil rights movement of the Sixties, political and social and economic reforms in Ulster and a new approach to Stormont might have kept the peace, and enabled the majority and minority to live together as part of the United Kingdom.

But such steps today would just be more of the "too little and too late" approach that Britain has taken toward Northern Ireland throughout the present crisis. It is not enough to end internment, to withdraw the troops, to reconstitute Stormont and the Cabinet, to offer massive economic aid, or to adopt all the other reforms proposed in years gone by. It is not enough even to redraw the Ulster boundary, as some have proposed in recent weeks in a desperate and doomed attempt to find a formula that will keep some corner of Ulster forever British.

No, the goal of unification is now too close for Ireland to turn back. There must be a commitment to unification, to an end to British rule in Ireland, to an end to the unnatural partition that Britain forced on Ireland in the 1920's. If the Ian Paisley is willing to contemplate a united Ireland, can the rest of Ulster be far behind?

Given the history of partition, the resort today to the Atlee Declaration and the talk of a plebiscite on self-determination for Ulster, is a travesty of a noble principle. If there is to be self-determination for Ulster, then why not self-determination for Londonderry and County Tyrone?

We know the calculated and cynical gerrymander that produced Ulster fifty years ago. The only self-determination applicable today is self-determination for all of Ireland, not just for the uncouth entity that Britain spawned in the 1920's. Half a century is not enough to stamp the Ulster State with any acceptable seal of legitimacy in the eyes of those who truly believe in self-determination, unless there is full agreement by both the minority that is Catholic and the majority that is Protestant.

In closing, let me affirm again my view that I condemn the terrible violence and brutality in Northern Ireland. I condemn the violence of the IRA. I condemn the violence of the British troops. I condemn the ominous new violence at Aldershot last week and the murderous assault on John Taylor, just as I condemn the wanton killings on Bloody Sunday. I share the words of Cardinal Conway, who spoke so eloquently on this central issue in his Christmas message last year:

"To kill a man deliberately—to snuff out an innocent life—is a terrible deed. The person who can do it is already less than a man; some part of his human nature has been frozen to death. And this is true, no matter who does it, no matter what side he is on."

But I also recognize that neither urgent protests against the violence nor the use of overwhelming military force to contain it is enough alone to end the crisis. So long as Britain pursues the phantom of military victory over the IRA in Ulster, the violence will continue, and the search for peace will be in vain. Fifty thousand Americans died before we learned that tragic lesson in Vietnam, and there can be no excuse for Britain to have to learn that lesson now in Ulster.

In my testimony today, I have attempted to state the principles I believe we must pursue to end the violence in Northern Ireland. I urge the Committee, the Congress and the nation to join the cause of peace in Ulster, the cause of Irish unity, the cause of justice and freedom. It is time for the Administration to end its policy of silence. It is time to speak out against the rising toll of death and violence in Northern Ireland. It is time to do all we can to help the victims of the tragedy, and to make our good offices available to mediate the crisis.

We know the unconscionable price America paid for its months of silence over the brutality in Bangladesh. Now, we have an opportunity to resume our moral leadership in the world, and to encourage men of good will everywhere in their efforts to bring a new and more lasting peace to all the people of Ireland.

The eloquent words of Padraig Pearse are as relevant today as when he spoke them at an Irish hero's grave over half a century ago:

"Life springs from death," he said, "and from the graves of patriot men and women spring living nations. . . . They think that they have pacified Ireland. . . . They think that they have provided against everything; but the fools, the fools, the fools! . . . While Ireland holds these graves, Ireland unfree shall never be at peace."

ZONE OF PEACE IN SOUTHEAST ASIA

Mr. ROTH. Mr. President, in a recent speech I called the attention of the Senate to the proposal of the members of the Association of Southeast Asian Nations—ASEAN—Indonesia, Malaysia, the Philippines, Singapore, and Thailand—to create a zone of peace, freedom, and neutrality in Southeast Asia. I emphasized that the effective establishment of a neutralized Southeast Asia would require the adherence of all the larger countries, and especially that of China and Japan. It was, therefore, with considerable interest that I learned of a recent editorial in Sankei, a Japanese newspaper, which commented upon some of Japan's moves on this same subject and referred to the ASEAN proposal. Sankei pointed out that at a recent session of the Geneva Disarmament Conference, Japan, for the first time, has expressed its willingness to cooperate in a regional disarmament program in Asia. The newspaper urged that Japan "establish its own long-range vision on Asian peace, as a promoter of the concept of regional disarmament." At the same time, Sankei referred to some of the many difficulties associated with the concept of regional disarmament and concluded by urging that Japan's policies be guided by clear notions of how its own security is to be best insured.

Mr. President, I ask unanimous consent that a translation of the Sankei article be printed in the RECORD.

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

REGIONAL DISARMAMENT OF ASIA AND JAPAN

At the Geneva Disarmament Conference, Ambassador NISHIBORI clarified that Japan is ready to co-operate positively in the realization of regional disarmament of Asia. Of course, the Foreign Ministry is taking the attitude of studying a concrete concept for regional disarmament of Asia after watching various countries' reactions. It is not that his speech will cause Asia to move toward regional disarmament even immediately.

However, the said speech is very significant in that Japan has shown positive interest in the promotion of regional disarmament of Asia for the first time, amid the fluid Asian situation following the Sino-US summit talks. At the same time, it can be evaluated as having further expanded the scope of Japan's multilateral, autonomous peace diplomacy toward Asia.

As to regional disarmament, the Central and South America Non-Nuclear Zone Treaty was already concluded, and the Resolution for the Non-Nuclearization of Africa was also approved in the UN. In Asia, there were such conspicuous moves as the adoption of the "Southeast Asia Neutralization Declaration" by the five ASEAN countries in the fall of last year.

Moves toward regional disarmament have risen in this way because "various valley countries" resisting the big-power diplomacy by the United States and the Soviet Union are trying to explore their own security through regional co-operation. What deserves special attention in the moves toward regional disarmament of Asia is that with the opening of the tri-polar age, symbolized by the Sino-US summit talks, there is the growing recognition among the medium and small countries in Asia that the establishment of a neutral zone not belonging to any camp is the only way to survive the tri-polar age.

The Sino-US Joint Communique stated that "neither the United States nor China will seek hegemony over Asia and the Pacific," and thus clarified their attitude of respecting the autonomy of the countries in these areas. In this sense, it can be said that regional disarmament of Asia is aimed in the correct direction, from a long-range point of view. Therefore, the fact that Japan has clarified its co-operation in the realization of the said concept at this time will cause arguments on regional disarmament of Asia to become vigorous.

However, the problem is that the Asian situation is extremely fluid, involving many obstacles to regional disarmament's beginning to move in a concrete form. Europe is steadily beginning to move toward realizing the concept for the security of all Europe, and this is backed by the stabilization of Soviet-German relations. In the case of Asia, however, such after-effects of the cold war as the confrontation between North and South Korea and the Indo-China situation are continuing. There is also the problem of Soviet-Chinese confrontation, and there is not a little room for doubt as to how effective regional disarmament can be at the present stage. The reason is that for the realization of this disarmament, it is necessary for relations among the US, the Soviet Union, and China to become finally stabilized, and for the Asian nations to obtain support and guarantee from these three countries.

Therefore, the future is full of difficulties. There is extremely difficult work on how effectively the Asian countries' desire for autonomous regional disarmament should be fitted to and co-ordinated with the Soviet Asian collective security concept, China's East Asia non-nuclear zone concept, and the Nixon Doctrine, which all involve their respective expectations. Careful watch according to a change in the situation and efforts for many hours of accumulation are probably necessary.

For this purpose, however, it is pre-requisite for Japan to establish its own long-range vision on Asian peace, as a promoter of the concept for regional disarmament of Asia. At the same time, a definite direction must

be determined also as to what Japan's security should be.

SMALLPOX

Mr. HUGHES. Mr. President, with all the health problems in the world today, it is a pleasure to note that progress is being made in some areas.

As chairman of the Special Subcommittee on International Health, Education and Labor Programs of the Committee on Labor and Public Welfare, I was pleased to read a recent article in the Medical Tribune on the subject of smallpox eradication. According to the article, smallpox has been completely eliminated from the Western Hemisphere and prospects look good for worldwide elimination of this dread disease within the next few years.

This progress is the result of an intensive, multilateral program of the World Health Organization, financed in part by U.S. funds. I believe there is a need to learn more about the international health programs supported by the United States, so that we can concentrate our resources on projects with the best chances for success.

I ask unanimous consent that the Medical Tribune article referred to above be printed in the RECORD.

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

WHO OFFICIALS SEE AMERICAS COMPLETELY CLEAR OF SMALLPOX

GENEVA.—World Health Organization experts are confident that smallpox has been cleared once and for all from the Americas, following the elimination of remaining pockets of the disease in Brazil.

In spite of an intensive search for isolated pockets of smallpox in Brazil, none have been found or reported for the past eight months.

In fact, WHO's world-wide eradication program is showing such remarkable success—after five years prevalence is down from an estimated 2,500,000 to 50,000 reported cases—that the program's director, Dr. Donald A. Henderson, predicts that smallpox will cease to exist within the next five years.

The WHO staff man is firmly of the opinion that eradication is both technically and operationally feasible.

"Within two years we should have smallpox down to a few limited areas, and if at that time we are able to mobilize our existing resources, then we should very soon thereafter be able to clear the remaining foci," Dr. Henderson said.

No therapy exists for smallpox, Dr. Henderson pointed out. "Between 15 and 30 per cent of those acquiring variola major die; of those acquiring intermediate forms as found in Africa, about 10 per cent die; and of those with variola minor, about 1 per cent," Dr. Henderson commented.

The intensified WHO effort against smallpox was begun in 1967. In that year 42 countries reported 131,000 cases of the disease, although later WHO surveys indicated that, because of poor reporting, the actual figure was probably in the region of at least 2,500,000.

ENDEMIC IN 30 COUNTRIES

At that time, the disease was endemic in 30 countries in Africa (most countries south of the Sahara) Asia (Afghanistan, India, Indonesia, Nepal, and Pakistan), and South America (Brazil).

Approximately $15,000,000 to $20,000,000 is now spent every year on the program, of which $3,000,000 is provided directly from the WHO regular budget and a further $4,000,000 to $6,000,000 is contributed by governments (mainly the United States and the Soviet Union) and other sources.

"The amount contributed by governments of countries where smallpox is still endemic varies considerably," Dr. Henderson commented. "India, for example, pays the majority of the cost of this program, whereas the Ethiopian program is almost entirely financed by outside sources."

Around 200,000 vaccinations are carried out each year at an estimated over-all cost of 5 to 10 cents per vaccination performed.

A feature of the WHO strategy has been the increasing tendency to de-emphasize mass vaccination, because it has been demonstrably ineffective.

"In Central Java . . . a survey slowed more than 92 per cent (of the population) with vaccination scars. At the same time over 1,600 cases were occurring. More than 90 percent of these cases had never been vaccinated.

"At the same time, Ceylon was free of smallpox with less than half of the population vaccinated. The difference quite simply was that smallpox in Ceylon prompted immediate field investigation and intensive containment activities. In Indonesia the program had been one of indiscriminate vaccination and yet more indiscriminate vaccination," Dr. Henderson commented.

Thus, a key element in the WHO program has been the establishment of national surveillance teams to investigate and contain outbreaks and to search for cases.

"It is worth remarking that, to date, when a surveillance program has been established in a state or country, transmission has usually been interrupted within 12 months—at most within 24 months," Dr. Henderson said.

Vaccination techniques have also developed. "Late in 1967 we began to experiment with the forked or bifurcated needle, and this proved to be as revolutionary a device as the safety pin in its day," Dr. Henderson said.

The bifurcated needles are now in use throughout the endemic countries and are replacing the jet injector, which although highly effective was a constant headache in terms of maintenance, repair, and spare parts, said Dr. Henderson.

DEVELOPMENT BROUGHT RESULTS

These developments, together with the establishment of production facilities for an assured supply of potent, freeze-dried vaccine, soon brought results and by 1970 the number of reported cases was down to a record low.

Reported cases last year were higher than in 1970 and reached a total of about 50,000 by the end of December. "However, more than 50 per cent of this total was accounted for by Ethiopia, where in the past reporting has been poor and the WHO-assisted program is at an early stage," Dr. Henderson said.

Elsewhere, there has been a 25 per cent decline in the incidence of the disease since 1970.

"Only 17 countries have reported smallpox cases last year, and endemic transmission was confined to six," Dr. Henderson noted. Of these, West Pakistan, India, Ethiopia, and Sudan are the main problem areas, he added.

These trends are reflected in the decisions of the British and U.S. governments to cease recommending routine smallpox vaccination for children. "However, the world situation is such that WHO does not yet recommend that similar action be taken by all non-endemic countries," Dr. Henderson told MEDICAL TRIBUNE.

TRIAL OF SIMAS KUDIRKA, LITHUANIAN SEAMAN

Mr. PERCY. Mr. President, on March 22, 1972, the Chicago Tribune published an important editorial commenting on the trial of Lithuanian seaman Simas Kudirka who sought asylum on a U.S. Coast Guard cutter in November 1970. In the editorial, the details of Kudirka's trial are explored, including Kudirka's reported comments about excesses committed against the Lithuanian people since their country was seized by the Soviet Union in 1940.

I commend the editors of the Chicago Tribune for helping to keep alive public concern for Simas Kudirka. Only if the press and public officials continue to focus national and international attention on Kudirka's plight will he have any hope for ultimate freedom.

Mr. President, I ask unanimous consent that the Chicago Tribune editorial be printed in the RECORD.

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

KUDIRKA'S "TRIAL"

Some time ago it was tersely reported that Simas Kudirka, the Lithuanian seaman who on Nov. 23, 1970, vainly sought asylum on the U.S. Coast Guard cutter "Vigilant", had been sentenced to 10 years' imprisonment. Further details concerning Kudirka's "trial" are offered in the newsletter issued from Searcy, Ark., by Dr. George S. Benson, who gives as his source the Assembly of Captive European Nations.

According to this account, Kudirka's trial before "the Supreme Court of the Lithuanian Republic" was conducted in almost total secrecy, before only a few functionaries, policemen, and Kudirka's wife. The defendant rejected the services of a court-appointed defense lawyer, saying that if the lawyer attempted an honest defense he could only get himself in trouble, and that if he proposed just to second the prosecutor, one prosecutor was enough. Kudirka conducted his own defense, speaking for four hours.

The charge was "high treason." A draconian Soviet statute includes attempting to leave the country without permission in its definition of that capital offense. But Kudirka said, "I consider myself completely innocent." He pointed out that the Soviet constitution [which reads quite well in many respects] does not make desire to leave the country a criminal offense.

Kudirka is reported to have recited to the court many injustices and atrocities Lithuanians have witnessed since the Red Army occupied their country in 1940. "I wanted to flee from the scene," he said, where not a week passed without bodies of nationalist partisans being stacked in town marketplaces, where always there was a "total lack of rights."

Kudirka evidently turned his defense into an eloquent and courageous attack on his judges and the system they represent.

It is a question if 10 years in a slave labor camp is a more lenient sentence than summary execution. Yet, thanks to the resourcefulness of the anti-Soviet underground, we may hope to hear of Simas Kudirka again.

GUNS AND BUTTER?

Mr. EAGLETON. Mr. President, I invite the attention of Senators to an excellent article written by Mr. Steve Weber, of the Kansas City Star. The article, taken from a lecture by Mr.

Weber, entitled "Guns and/or Butter: What Price National Security?" discusses the effect that massive spending on defense has had on our economy.

In a particularly insightful section on our balance of trade problem, Mr. Weber states:

The booming economy (booming, bear in mind, because of all the new defense spending) was attracting more and more imports. Why? Because making bullets is not making stereo sets or tape recorders. A booming economy means more demand for consumer products because the people have more money to spend on them. Enter the Japanese and Germans and others, who were pleased to oblige us. Exit the dollar.

The end of Mr. Weber's article contains a fictional colloquy between General X and Senator Y which is meant to portray the ease with which defense budgets are pushed through Congress without careful scrutiny. I am pleased to inform Mr. Weber that this is no longer the case.

The distinguished chairman of the Armed Services Committee (Mr. STENNIS) has characterized his term as chairman by a tough, second-look approach to defense projects. Senator STENNIS has shown a keen understanding of the economic problems which face this Nation and has insisted that the American people get a full dollar's worth of security for every dollar spent on defense.

Mr. President, I ask unanimous consent that the article published in the Kansas City Star of March 19, be printed in the RECORD.

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

U.S. SECURITY COSTS OVERWHELM ECONOMY

Steve Weber, assistant financial editor of The Star, spoke before the International Relations Council last week as part of their Great Decision lecture series. His topic was "Guns and/or Butter: What Price National Security?" The following is excerpted from that talk.

It now appears 1972 will mark an end to direct U.S. troops involvement in Vietnam. There has been enough hand-wringing done over Vietnam to do any more, except for the fact that Vietnam happened—in fact it's still happening—so it should not be put out of our minds until it teaches us some lessons.

To a large degree Vietnam is at fault for the economic problems of the last few years. The guns and butter policy of Lyndon Johnson fueled inflation at the worst possible time: When the war-geared economy should have been cooled off gradually it was heated up.

The effects of this and of the resulting inflation are history: Nearly everything the Nixon administration has tried, done, or undone regarding the economy has been geared to slow inflation. The recession and stock market nosedive of 1969–70 and part of '71 were the results of an attempt to slow inflation.

While dollars were flowing out of the U.S. into Vietnam, it became evident our balance of payments shortcomings were approaching a crisis stage.

To understand the Johnson administration's guns-and-butter policy—and what hangover effects it has had—and still has—on the economy, one should look at what transpired during the Vietnam build-up period from 1965 to 1968. The policies led to a situation which caused Philip Sporn, a member of the Committee for Economic Development (CED), to remark: "Even at the present level of expenditure for guns, the country is over-buttered."

In 1965 the defense build-up immediately accentuated inflationary tendencies: Total purchases that year rose $47 billion, while defense purchases declined $1.5 billion. The next year total purchases rose $61 billion, defense purchases $9 billion. When this inflationary evidence was felt, late in 1966 the Federal Reserve moved to halt the rise in the money supply. The tax credit for new investment was suspended, but at the first signs that inflation was abating, the government relaxed its anti-inflationary measures.

In the 1966–67 period, the prime factor in the rise of inflation was the jump in the unit labor cost—with a slowdown in the growth of output per man hour. As defense dollar needs grew nondefense dollar demands became strained. It should have been a problem of priorities—which program should have its funds cut. But such action is not politically popular and the government made no effort to restrain nondefense spending.

ENTER THE IMPORTS

Meanwhile, the booming economy (booming, bear in mind, because of all the new defense spending) was attracting more and more imports. Why? Because making bullets is not making stereo sets or tape recorders. A booming economy means more demand for consumer products because the people have more money to spend on them. Enter the Japanese and Germans and others, who were pleased to oblige us. Exit the dollar.

By 1966 the pressure of investment demand had grown—but not the supply of available savings . . . this, of course, forced interest rates up. As usual in a time of raising interest rates, mortgage lending was hit first, which in turn damaged the residential construction industry.

Of this period the CED, in a policy statement, commented: "The consequences of policy actions and inactions of the Vietnam build-up period through 1967 were serious. There was an upsurge of inflation and a concentration of the real impact of the military buildup on fixed investment, especially housing, and on net exports."

Despite a brief inflow of foreign funds in reaction to the higher interest rates which were being paid in the U.S., the balance of payments situation grew worse. Direct foreign exchange costs of Vietnam rose by more than $500 million in 1967 as the total went above $2 billion. Even the tourist-travel deficit rose by $200 million.

What lessons should have been learned from this?

1. The government was unable to see how significant the Vietnam build-up would be. A problem here was that the possibilities concerning the war's scope that existed in the minds of the war's managers were not always made clear to managers of official economic policy.

2. In the period from 1965 to 1967 the government tended to be excessively tolerant of the risks of inflation as compared with the risks of unemployment. This was a passive policy, a shrinking of decisionmaking. An old rule-of-thumb was used here: Inflated dollars don't vote; people do.

3. A tax hike, which might have eased the inflationary results of rising government spending, is politically deadly, and was not acted upon.

What policy changes should be made to avoid the difficulties engendered by Vietnam: For one, the government should have a longer-run view of inflation, that is, act according to a more deliberate policy rather than continually adjusting to the crisis-of-the-moment.

More and better information is needed about what the most probable size of the defense program should be. Also a more sophisticated approach in analyzing the budget, which would separate changes in the level of economic activity from those which result from policy decisions, would be useful.

Tax and spending decisions in Congress are fragmented into different committees. The machinery of Congress should be more co-ordinated in this regard.

FUTURE BUDGETS

Looking ahead to a period of peace, where do we see the military budget going? After all, roughly half the federal budget and 10 per cent of the total economic product has gone for defense—but never has more than half of the military budget gone into the cost of the Vietnam War.

In reality more military spending is in the offing . . . which resurrects the political question of how much defense we need.

But there is more to the cost problem than new missiles and new submarines. The cost of present programs—and the way the contracts have been awarded—should be looked at closely.

In 1968, according to Congressional statistics, 60 per cent of all defense contracts were with firms that were the sole source of supply for their particular goods or service. Only 11.5 per cent of defense contracts with private firms came through competitive bidding.

In Congressional hearings two years ago, John Kenneth Galbraith said, regarding defense contracts; "Opposition of interest between buyer and seller disappears. The buyer is as interested in the survival and well-being of the seller as is the seller himself. The situation, if I may be permitted to coin a word, is cozy."

The reliance on government spending, as a whole, can be noted for its effects on the economy. Figures in an analysis written by Paul N. Gershon, a regional analyst for E. F. Hutton & Co. here, show that in a 1970 breakdown of all industry groups, the government rate of inflation was 10.3 per cent. The government impact on the total was 23 per cent. The government's figures were the highest in both categories of all industrial groups.

A Kansas City businessman, Jack H. Whitaker, vice-president of administration for Whitaker Cable Co., last week attended a two-day seminar in Washington entitled "National Priorities and the Federal Economic program."

QUESTION OF CHOICE

Whitaker said in an interview that an overriding theme of the conference was that "we are not a nation of unlimited wealth . . . that certain choices must be made. We must indulge in more comprehensive, less secretive long-range planning." He also noted that there was a feeling among those attending that "the public is disappointed there hasn't been the so-called promised 'peace dividend.'" There was talk that this peace dividend, the funds freed from the war's use, would amount to $30 billion.

Two publications Whitaker brought back with him struck responsive chords. The first was an article by Thomas J. Watson, former chairman of IBM, which appeared in I. F. Stone's Bi-Weekly. In it he stated:

"Ten years back, in the twilight years of the Eisenhower era, I served with some very distinguished Americans on a committee called the Commission on National Goals . . . Our job, back in the late 1950s was to suggest goals for our country in the 1960s, and two things surprised me at the time. First, was the realization that this country had no very specific goals set down on paper; and second was the realization that no matter what goals we chose, there was practically no mechanism in government to methodically implement them—and there isn't now . . . As an institution begins to grow it must change the way it manages its affairs. This is true in business and it is no less true in government . . ."

The other publication was a copy of a letter which was sent to one of the coordinators of the conference. It read, in part:

"We are spending more than need be for national security and we know not what it is. In spite of the billions we have spent for this big insurance policy, there is a less secure feeling in the country today than at any time since World War II. There are many more strategic weapon systems for each job than are needed. I share your concern in these matters. . . ."

The letter was signed: "Gene LaRocque, Rear Admiral, U.S. Navy."

When criticism is made that millions of dollars are tied up in missile silos, unavailable for public use, military spokesmen say "good, aren't we all glad they're not being used." In this sense a weapon's idleness is a testimony of its effectiveness.

But that's not the whole picture. Defense expenditures by their very nature are inflationary. They do not add anything to our consumable output. Consumable goods or services create income. Missiles, after they are built, create little.

NONCONSUMABLES

Why is defense spending so inflationary? Because defense contractors produce stuff nobody can buy—like missiles. People make money building missiles, but these people who make missiles have no more goods or services available to them on which they can spend their earnings.

With more money to be spent—and no more goods and services available—people are, in fact, bidding up the prices of the existing goods and services. This is a key part of inflation.

Resources are scarce—and will continue to be so. Every dollar used for defense is a dollar not used for something else.

One other point: Defense money doesn't have to be justified like, say, welfare money. Gen. X says the country needs a billion dollars for development of a new submarine.

A critic asks: Why? Why do we need it and why will it cost so much? Gen. X answers: "According to the most reliable sources and figures, we need it and it will cost a billion dollars."

The critic replies: "Based on what information? Tell me."

"Sorry," Gen. X responds. "I can't. The information is top secret."

Industry has backed Gen. X . . . and so has Sen. Y whose state houses the factory that builds the new submarine . . . and Mr. Z, who owns the factory. Even if taxpayers agree with Gen. X that we need the submarine, they might put pressure on all vested interests to watch their costs and indulge in a little free enterprise competition to maybe lower some costs. That's just good business.

Four recommendations suggested by Charles L. Shultze, senior fellow of the Brookings Institution, bear looking at. He recommended that the State Department submit to Congress a posture statement which would outline overseas commitments, their status changes, and their contributions (or lack of them) to the nation's vital interests.

This paper should relate to the Defense Department posture statement which is delivered to Congress annually. Secondly, the Defense Department should present and keep current a 5-year projection of budgetary requirements. Defense should also provide more cost data on its projects. Lastly, the two posture statements of the State and Defense departments should be weighed against broad national priorities.

DEMILITARIZE THE FEDERAL BUDGET

Dr. Seymour Melman, professor of industrial engineering at Columbia University, director of the Center for Manpower Studies, George Washington University, and the author of many publications on the subject of defense spending, noted in a speech before a House of Representatives committee:

"There would be no problem of paying for reordered national priorities if there were not a military budget and other war costs, past and present, that account for 64 per cent of the 1972 tax dollar.

"Since the Second World War the military burden has totaled over $1.1 trillion, more than the value of all residential and business structures in the U.S. Having forgone the productive use of such immense resources, it is no mystery that such deterioration is visible around us and that inflation, underemployment and fiscal weakness have become the ills of the American economy. This decay in American life cannot be remedied except by demilitarization—first of the federal budget. The Nixon administration proposes a 1972 budget of $79.2 billion for the Department of Defense. I suggest that the military security of the United States can be competently served with armed forces costing two-thirds less, between $25–29 billion.

"The difference, approximately $50 billion per year, is what is needed to start restoring the United States economically and morally.

"A defense budget should be adequate to pay for the men and equipment needed to implement a particular military security policy is the heart of the matter. How much is enough is defined by enough for what? If what is wanted is the capability to try to overwhelm opponents in deliberately run nuclear wars, then recent U.S. military budgets and forces are barely adequate, or too low. On the other hand if the preferred security policy is aimed basically at defense—defined as nuclear deterrence, competence to guard the United States and the capacity to contribute to international peacekeeping—then the present U.S. military establishment and its costs are extravagant. At present, the Nixon administration's policies call for capability to fight a nuclear war and two other wars at the same time . . ."

In his book entitled "Pentagon Capitalism: The Political Economy of War," Melman observed:

"In an industrial economy, two classes of technical activity limit the current and future quality of the industrial system. The first is the scale and quality of research and development; the second is the quality of the physical plant used for production. The physical plant fairly well determines the productivity of both capital and labor, and research and development affect the development of productivity and product innovation.

"In November, 1968, the McGraw-Hill Company completed its regular five-year inventory of metalworking machinery in U.S. industry; it disclosed that 64 per cent of the metalworking machine tools used in U.S. industry were ten years old or older. The age of this industrial equipment (drills, lathes, etc.) marks the United States' machine tool stock as the oldest among all major industrial nations, and it marks the continuation of a deterioration process that began with the end of the Second World War. This deterioration at the base of the industrial system certifies to the continuous debilitating and depleting effect that the military use of capital and research and development talent has had on American industry. The machine tool industry is merely one of the American civilian industries with modest research and development programs (excepting a literal handful of the very largest firms) and with unstable, hence inefficient, production systems.

"The aging stock of machine tools constrains productive growth within the entire industrial system, because all metalworking industries utilize machine tools to a greater or lesser degree. While the United States carries out research and development (R&D) programs on a scale unmatched by any other country, it is important to evaluate this activity in terms of the concentration points of the R&D effort, as well as the size of the U.S. population and the scale of its economy. Thus, in November, 1967, the International Organization for Economic Co-operation and Development (based in Paris) found that the United States had 700,000 scientists, engineers, and technicians working in research and development. However, 63 per cent of this activity was on behalf of the military. Thus, approximately 259,000 R&D personnel were estimated to be engaged in civilian work. This compares most unfavorably with the western European research and development staff which totals 466,000, an overwhelming part of which is engaged in civilian research and development."

GUIDELINES FOR ALASKA REGIONAL CORPORATIONS

Mr. STEVENS. Mr. President, I recently have been advised by the Assistant Secretary of the Interior, Mr. Harrison Loesch, that the Interior Department, has formulated its guidelines for the Regional Corporations authorized by the Alaska Native Lands Claims Settlement Act.

In 1971, Congress took a historic step by its passage of this act to settle the outstanding claims of the Alaska Natives. The act authorized the creation of 12 Alaska Native Regional Corporations which will implement the settlement provisions set forth.

Mr. President, the promulgation of these guidelines will permit Native associations to take immediate steps toward incorporation. This process is an urgent necessity in order for these associations to qualify for interim financing from private sources.

Mr. President, I ask unanimous consent that the "Guidelines for Articles of Incorporation and Bylaws of Regional Corporations" be printed in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., Feb. 22, 1972.

ORGANIZATION OF REGIONAL CORPORATIONS UNDER ALASKA NATIVE CLAIMS SETTLEMENT ACT

Attached for your information is a copy of the Department's "Guidelines for Articles of Incorporation and Bylaws of Regional Corporations."

Triplicate originals of the Articles of Incorporation and Bylaws, together with the statements required by the guidelines, should be submitted to this office for approval under Section 7(e) of the act. Secretarial approval will be endorsed on each set of Articles and Bylaws and two will be returned to you for filing with state authorities.

Of course, both this office and the Solicitor's Office are available to discuss incorporation problems at any time.

HARRISON LOESCH,
Assistant Secretary, Public Land Management.

GUIDELINES FOR ARTICLES OF INCORPORATION AND BYLAWS OF REGIONAL CORPORATIONS

Section 7(e) of the Alaska Native Claims Settlement Act provides for Secretarial approval of the original articles of incorporation and bylaws for each regional corporation. In order to facilitate the work of the incorporators and their attorneys, the Department has prepared these guidelines or criteria for use in reviewing the proposed articles and bylaws.

These guidelines reflect the Department's announced policies:

(a) That the organization and operation of the regional corporations should be left, to the greatest extent possible, to its owners—the stockholders;

(b) That the regional corporations should be organized as soon as possible, to enable them to timely meet their obligations under the act; and

(c) That until the enrollment process is completed and the stockholders are fully identified, the regional corporations should have limited authority.

Because each region may experience unique organizational problems, these guidelines are not inflexible. Variances will be considered where any guideline is considered inappropriate.

Except where the act specifically requires that a particular provision be inserted in the articles, it may be inserted in the bylaws, when appropriate and if accompanied by a provision that the particular bylaw may not be amended during the regional corporation's first five years without the approval of the Secretary.

I. GENERAL

As provided in Section 7(d) of the act, the articles must contain those provisions necessary to carry out the terms of the act. Unless otherwise limited by the act or by the articles and bylaws approved by the Department, each regional corporation should have all the powers of an Alaska business corporation.

Approval of articles and bylaws will be withheld if inequities among Native individuals or groups of Native individuals would be created.

II. INCORPORATORS

The incorporators should be named by the Native associations listed in Section 7(a) of the act. A statement should be submitted to the Secretary identifying the residence of each incorporator, his position, if any, with the association, and the manner by which the incorporators were selected.

III. DIRECTORS

A. A statement should be submitted to the Secretary identifying the residence of each member of the initial board of directors, his position, if any, with the association, and the manner by which the initial directors were selected.

B. The terms of the members of the initial board of directors should be one year. In any election conducted prior to completion of the roll, the terms of the directors should also be one year. In board elections conducted after completion of the roll, the terms shall be as fixed in the articles.

IV. VOTING

A. In board elections conducted prior to completion of the roll, Natives enrolled of record on the first day of the month preceding the election should have the right to vote.

B. Voting proxies should be in writing and limited to a period of not more than 11 months. Until after the first board election following completion of the roll, proxies may be given only to Natives enrolled in the same region.

C. Cumulative voting should be allowed in all board elections.

V. POWERS

A. Unless otherwise limited by the act or by the articles and bylaws approved by the Secretary, each regional corporation should have all the powers of an Alaska business corporation.

B. Prior to completion of the roll and election of the first board of directors thereafter, the powers of the regional corporation will be limited as follows:

(1) *Borrowing Funds:* Limited to a ceiling authorization set forth in the articles, except that additional funds could be borrowed with the approval of the Secretary. A statement justifying the proposed ceiling authorization shall be submitted to the Secretary together with the proposed articles and bylaws.

(2) *Spending or Committing Funds:* Limited to: (a) a ceiling authorization set forth in the articles; (b) a period of time not to exceed one year, and (c) organizational purposes and to assemble and analyze data pertinent to land selections and related responsibilities. Funds may be spent or committed in excess of the ceiling authorization, beyond a one year period, or for other purposes only with the approval of the Secretary.

(3) *Investment of Funds Distributed Under Act:* Limited to periods not to exceed one year, except that longer term investments may be made with the approval of the Secretary.

(4) *Land Selections:* May not be made.

VI. APPROVAL OF ARTICLES OF INCORPORATION OF VILLAGE CORPORATIONS

A. Regional corporation should withhold approval of articles of incorporation of village corporations if inequities among Native individuals would be created.

B. Approval of articles of village corporations should be withheld unless they contain a provision prohibiting the selection of lands by the village corporations prior to completion of the roll and election of the first village board of directors thereafter.

THE PRESIDENT'S MESSAGE ON AGING

Mr. MOSS. Mr. President, I waited with great anticipation on Thursday last when I heard that President Nixon's long-heralded Message on Aging was being released.

With all the momentum following a truly historic White House Conference on Aging and given the peculiar pressures of a presidential election year I fully expected, and even hoped, for another of the now-famous Nixon reversals. Having read the full text of the Nixon message I am greatly discouraged and disappointed. Much to my chagrin I must today report that the Nixon Message on Aging ignores the substantive resolutions of the White House Conference on Aging and continues the administration's policy of neglect and indifference to the needs of older Americans.

The President, it seems, is willing to make a political issue out of the devastating problems that confront the elderly. The speech gives the impression that the administration is doing much while in reality it is doing little. The Presidential message is high in platitudes and low on substance; it promises much of what Congress already is providing. All in all, it is a most unpalatable pablum.

These are harsh words, but I have measured them carefully, and I invite anyone to journey with me through the never-never land of this message on aging to measure the validity of my conclusions.

The Presidential message notes that the Federal Government will spend $50 billion in fiscal year 1973 for the elderly. The use of this figure is most unfortunate. It gives the impression to seniors that there is a sizable amount of money budgeted for their needs. It simply is not true. We are provided with no exact breakdown of this $50 billion figure but most experts agree that it include payments due from the social security trust fund.

In related point the administration cites funding for the Older Americans Act, with announced dramatic increase in these funds during the Nixon administration. The facts are that the Older Americans Act had been funded at the $32 million level and the Nixon administration last year requested only $29.5 million and then, only after the chairman of the Senate Committee on Aging, Senator CHURCH, called special hearings on this subject was the amount finally raised by the Congress to $100 million and reluctantly accepted by the administration.

Following is a point by point recitation of the major problems confronting the elderly from the President's message, followed by the solutions proposed by the White House, and my comments thereon.

INADEQUATE RETIREMENT INCOME (THE CENTRAL PROBLEM)

The President said:

Perhaps the most striking change in the lives of most Americans is the sudden loss of earned income which comes with retirement.

The President apparently was unwilling to take any new initiatives despite the recommendations of the White House Conference. He was content with a recitation of the proposals in H.R. 1. They are:

A 5-percent social security increase;

Tying future increases to the cost of living; and

Raising the amount that a senior can earn, without loss of part of his social security check, from $1,680 a year to $2,000.

Significantly, there was no mention of the proposed 20 percent increase in social security benefits which the chairman of the House Ways and Means Committee has promised and says can be provided primarily out of excess social security trust funds. Unless our Government agrees to this significant increase before tying future increases to the cost of living we will perpetuate forever the current fact which is that the elderly constitute the floor of our economy. It is startling to remember that one out of four seniors has income placing him below the poverty line.

But in addition we must raise it to at least $210 to $300 per month, the amount that a senior can earn without forfeiting part of his social security check. To do less will also perpetuate the present reality that social security constitutes a disincentive to work. Curiously, Mr. Nixon has taken a strong stand on this disincentive to work in other contexts, why not in this one?

ESCALATING REAL ESTATE TAXES (PROBLEM NO. 2)

The President said:

The heavy and growing burden of property taxes constitutes one of the most serious of all income-related problems.

The President promises:

To continue his investigation of alternative methods of financing public education and to work for his revenue-sharing bills.

Not long ago, I introduced and had printed in the RECORD my bill S. 3088,

which is far from perfect but attempts to deal with the problem of escalating real estate taxes. In introducing that bill I pointed out that in some instances we have learned that property taxes consume as much as 50 percent of the total incomes of some seniors. That situation is intolerable. It will not wait several years for study and more delay and recitation of good will from the White House. It is noteworthy that the Senator from Maine (Mr. MUSKIE), the Senator from Maryland (Mr. MATHIAS), and several other Members of Congress have introduced bills designed to provide our older citizens with some relief. It is regrettable that the President did not endorse any of these proposals or offer his own proposal.

CONSUMER PROBLEMS AND THE ELDERLY

The President said:

It is estimated that the elderly spend over $60 billion yearly for goods and services—our economy should be responsive to the needs of older consumers.

The President proposes:

Simply enactment of the "several pieces of administrative sponsored consumer legislation" designed to reduce dangers which are especially acute for older consumers.

The reality is that the administration has consistently opposed progressive consumer legislation and offers its own legislation only after it receives the impression that congressional passage appears likely. Administration proposals, without exception, seek to weaken congressional proposals designed to protect the consumers.

HUNGER AND MALNUTRITION

The President said:

The thought that any older American—may suffer from hunger and malnutrition is intolerable.

The President's Program:

He notes the great progress inherent in the passage of S. 1163, Senator KENNEDY's nutrition bill to provide meals in group settings and delivered meals for those confined to their homes. His speech gives the impression that the administration supported this proposal from the beginning.

The reality:

The administration had consistently opposed the Kennedy bill and had a change in heart only after the bill had cleared the Senate 87 to 0.

HOUSING

The President said:

The Administration has also worked hard to respond to the very special housing needs of older Americans.

The President's program:

A promise of 66,000 units for the elderly during this fiscal year and 82,000 units next year.

The Congress last year earmarked $35 million for housing for the elderly; HUD's impoundment of funds resulted in only half that amount being used.

By whatever measure, the President's program will not provide, nor does it claim to provide, a minimum of 120,000 housing units for the elderly which is the need fixed by the White House Conference on Aging.

Nor has the administration seen fit to endorse an Assistant Secretary of Housing for the Elderly. This is another resolution of the White House Conference and the office is established in the Housing bill passed by the Senate.

Nor has the administration elected to accept the resolution of the White House Conference on Aging to resurrect the section 202 program which provided direct loans to nonprofit sponsors who desired to build housing for the elderly. The Senate-passed bill includes a $100 million increase in the authorization for 202 housing, the most successful of our housing for the elderly programs. Section 202 ran 10 years without a failure and provided 45,000 units specifically designed for the elderly. It provided much more than housing—it provided services and a way of life.

It is worth stating again that this program was phased out in favor of a more expensive and less efficient program, section 236, which uses the interest subsidy mechanism. These subsidy programs are under attack at present because of their extreme cost to the Government. A $3 million project costs the Government $8 million in interest alone over the 40-year life of the mortgage. A recent HUD audit is sharply critical of interest subsidy in sections 235 and 236; other independent studies by Harvard and MIT for the Housing Banking Committee are also critical but the administration proudly enumerates that about 600,000 subsidized units will have been built in this fiscal year.

HEALTH PROBLEMS AND THE ELDERLY

The President said:

Growing old means poor health and declining income. Older Americans find that they must pay their highest medical bills at the time when they are least able to afford them. Seniors pay $861 per capita for health care while those of us younger than 65 pay about $250. Medicare—

Noted the President—

only covers 42 percent of their health needs but 40 percent of Medicaid—

I add a hyphen and the word "welfare"—

expenditures go to the support of health costs of the elderly.

The President's program:

Lifting the $5.60 a month premium that seniors must pay to receive coverage under part B of medicare. The reality:

At the same time that the administration proposed the lifting of the part B premium it has proposed higher coinsurance and deductibles under medicare which ultimately restricts medicare coverage. The administration, it seems, gives with one hand and takes away with the other. If that is not enough there was no mention of the need to expand the scope of medicare to cover prescription drugs, eyeglasses, hearing aids, or dental care.

INFLATION

The President said:

Because older Americans are dependent on relatively fixed incomes, they are uniquely victimized by the ravages of inflation.

The administration program:

The so-called new economic policy with its selected wage and price controls.

The reality:

A quick glance at the consumer price index will indicate how well phase II is working. The price of food and particularly meat is now sky-high. Consumer dissatisfaction is high and small wonder. Another pillar in the administration's game plan is to reduce Government spending—so it says on page 12 of the President's speech. There is a curious inconsistency here with page 2 of the text which refers to the $50 billion that presumably will be spent for the elderly this year and the suggestion that this is a 150-percent increase in spending for the elderly.

So it should be clear why I say that the President's message is disappointing. The White House it seems has chosen to follow rather than to lead. But even more disappointing the White House apparently is content with tokenism. It courts the elderly voter with an impression that it is taking action to meet his needs. But it does so as cautiously and inexpensively as possible.

To this point I have scrupulously avoided any comments about the President's eight-point plan to eradicate substandard nursing homes. Earlier, I promised that I will give HEW a chance before becoming unduly critical. Even so a few things must be said.

First, I do not see the substantial progress in improving nursing homes that the President sees. Progress in implementing the President's eight point plan has been anything but spectacular and much less than comprehensive.

Second, Secretary Richardson's December announcement that HEW would withhold funds from 38 States unless they had complied with Federal standards to bring their inspection procedures up to date by February 1 has all the earmarks of a publicity gimmick.

All States but one are said to have complied. What was required for compliance, I asked?

The States simply had to address a letter to the Secretary noting their intention to comply and to bring their procedures up to date.

The word "procedures" relates essentially to the flow of paper through the States' health and welfare departments. The new deadline of July 1 simply means that by then the States must have their paperwork in order. They must ascertain that all the nursing homes have transfer agreements, that Federal standards are used in certification, and that there is communication between HEW and the State health and welfare departments.

The essential question seem to be: When will the Federal and State Governments get down to the specifics of looking at patient care or only compliance of a nursing home with an amorphous set of paper requirements?

I suggest that it is important to measure capability. It is important to ask a nursing home if it has job descriptions and transfer agreements with a local hospital. But it is infinitely more important to go beyond capability to measure the type of care actually given. That entails looking at patients rather than pa-

per; looking for bedsores and errors in medication rather than errors in accounting.

Another item which has become a pet peeve of mine is that, while the administration speaks in terms of helping nursing homes to upgrade rather than closing them outright, I see no major effort from HEW to help nursing homes improve.

Other than the bill I introduced this session which would provide loans for the purchase of fire safety equipment, I see few efforts to help the nursing homes meet higher standards. The administration for example might propose a broad program for the repair and rehabilitation of nursing homes. In-service training programs could be offered for aides and orderlies on the local level.

There is much that can and must be done in this field. One thing appears to be essential to any improvement and that is greater involvement of physicians in long-term care. Few if any medical schools currently offer geriatrics as a specialty nor offer programs whereby interns can work in nursing homes. Here too, leadership is necessary from the administration.

That leadership as of now is not forthcoming.

The President's message is far from "good news for older Americans." I hope that the major senior citizen organizations will analyze the reality of this message for their membership. The 20 million older Americans deserve a better break from their Government. They could use another of the famous Nixon reversals.

REVENUE SHARING

Mr. FANNIN. Mr. President, the House Committee on Ways and Means has been considering legislation on revenue sharing. If such legislation is ultimately adopted it will mark an important milestone in the effort to rejuvenate the Federal-State partnership.

Enactment will mean the realization of one of President Nixon's major objectives. States will regain their position of leadership and the people will be given the opportunity to determine their priorities.

Mr. President, a good article on the subject of revenue sharing appears in the National Review of March 31. It was written by James A. Maxwell, a former teacher of finance at Clark University. 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:

YES, TO REVENUE SHARING

(By James A. Maxwell)

In the July 13, 1971 issue of the National Review, William G. Fredericks opposes revenue sharing on several grounds, two of which are that its adoption would 1) erode federalism by accelerating federal dominance over state and local governments, and 2) violate the principle of financial responsibility which holds that governmental decisions to spend should be matched with decisions to raise the necessary revenue.

Surely it is paradoxical to find that proponents of revenue sharing, from Walter Heller to President Nixon, declare their main aim is to strengthen federalism by reinvigorating state and local governments. President Nixon in his 1971 State of the Union Message said:

"The time has come for a new partnership in which we entrust the states and localities with a larger share of the nation's responsibilities, and in which we share our federal revenues with them so that they can meet those responsibilities. To achieve this goal, I propose to the Congress tonight that we enact a plan of revenue sharing. . . ."

Since the United States has no experience with general revenue sharing, appeal to historical evidence is not possible. Two other federal nations, however, have had experience. Canada started with general revenue sharing in 1867, and Australia, in 1900. In both nations fears were expressed at the outset (and for years after) which are now echoed in the United States. The Prime Minister of Canada, Sir Wilfred Laurier, said in 1905: "It is a sound principle of finance and a still sounder principle of government, that those who have the duty of expending the revenue of a country should also be saddled with the responsibility of levying and raising it." The Commonwealth Treasurer of Australia, Earle Page, said in 1927: "The government considers that the vicious principle of one authority raising taxation for another authority to spend should be terminated at the earliest possible date." Nowadays not even an echo of such verbiage can be heard. The system of revenue sharing (unconditional grants) is acknowledged by all political parties to be a force that strengthens federalism. The old adage that he who pays the piper calls the tune is recognized to be irrelevant; the old dispute looks like a fossil of history. And yet in the United States the old dispute has shown an unexpected capacity to promote controversy.

The experience of Canada and Australia has significance for the United States because these two countries are "natural" federalisms. They are large and diverse nations in which some *variation* in the type and level of many civilian governmental services, especially those provided directly to individual citizens, is in the national interest. Federal administration would be both inflexible and wasteful in the face of diverse needs. Reservations concerning details aside, the main thrust of general revenue sharing is in the direction of decentralization.

In 1971 President Nixon proposed not only *general* revenue sharing, but also *special* revenue sharing by which he meant consolidation of some 130 categorical grants into six groups: law enforcement, manpower training, urban community development, rural community development, education and transportation. Very many congressional leaders (including Representatives Wilbur Mills and John Byrnes of the Ways and Means Committee) have in *principle* endorsed special revenue sharing and then qualified their endorsements by criticizing the make-up or composition of the six groups. This attitude will, almost surely, be fatal to congressional action because it will be utilized by pressure groups to support and protect narrow categorical grants.

In Canada and Australia categorical grants have been viewed with suspicion as biased toward centralization.

In a federalism, functions of government and sources of revenue are divided between the Federal Government on the one hand, and state and local governments on the other. This division allows the Federal Government to handle its functions *uniformly* over the nation; it leaves the states free to handle their functions with considerable *variation* from state to state according to differences in citizen needs and preferences. Similarly, each level of government is free to construct and adapt its own revenue system. If the division of functions and revenues, federal and state-local, is satisfactory, the federalism will be fortunate. "Dual" federalism will work, and each level will find that its ability to handle its set of functions coincides with its ability to collect the needed revenues. Inevitably, however, the division will get out of date. An imbalance will develop between the situation of the Federal Government and that of all the states. This will be tolerable when the recognized governmental functions are neither numerous nor expensive, and when, as a result, every level of government has some acceptable sources of revenue open to it. But when, as now, extensive and expensive programs are in operation, and when, especially at the state-local level, elastic and equitable revenues are hard to find, the federalism is in trouble.

The trouble is compounded by the unequal fiscal strength of the states because then the imbalance has a differential impact. Governments in poor states cannot, with equal effort, provide levels of service equal to those of the rich states. For some services, as will be discussed, an appropriate remedy is to be found in the conditional grant; for others, however, the appropriate remedy is revenue sharing.

Three remedies for imbalance are available: 1) Federal responsibilities can be increased by direct takeover of services previously in state-local hands. This is centralization, an unacceptable remedy to me and to Mr. Fredericks which will not be considered here. 2) Tax sources can be moved from the federal to the state-local level. 3) Federal grants-in-aid, conditional and unconditional, can be utilized.

TAXES AND CREDITS

Little doubt can exist that the Federal Government is a better tax-collector of most taxes than are state and local governments. Most certainly it is a better collector of income tax. And yet the opinion persists (Mr. Fredericks is a believer) that a tax credit against the federal individual income tax would be a more satisfactory form of financial relief to state and local governments than revenue sharing. The most serious in a long series of proposals is that of Rep. John W. Byrnes, ranking Republican on the House Ways and Means Committee. By his bill (HR 8193) individuals would be allowed to credit against their federal liability up to 20 per cent of their payments of state-local income tax. For states *with* income taxes the first effect of such a credit would be to reduce the federal liability for individuals. If, for example, the federal tax of John Doe in New York was $1,000 and the state tax $100—a total of $1,100—the 20 per cent credit would reduce his federal tax to $980 and his total income tax to $1,080. In order to gain revenue the state would have to increase its tax. An increase of the state tax on John Doe from $100 to $120 would leave his total tax unchanged at $1,100.

The nine or ten states *without* income taxes would have to enact them in order to gain a credit. Some of them could not act without a constitutional amendment (which would be slow); some might inveigh against federal coercion; some might hail the credit as a bonanza, costless in the aggregate to their taxpayers, since the amount of the new state tax would be matched by the reduced amount of federal tax liabilities. *Pace* all these incertitudes, as well as other more technical flaws which cannot be exposed here. The issue on which to focus is: What would the Byrnes (or any similar) credit do, financially, for state and local governments which now have income taxes?

If all of them picked up fully the 20 per cent credit, their revenue gain in 1970 would have been $2.5 billion. The gains, however, are very unequal. States which are strong users of individual income taxation, e.g., New York and Hawaii, would have gained $38.60 and $33.20 per capita; states which are weak users, e.g., Mississippi and Maine, would have gained $4.66 and $4.84 per capita. But what if

Mississippi made an income-tax effort equal to that of New York (effort being measured as state-local collections as a per cent of state personal income)? New York in 1970 raised $137 per capita; Mississippi, with similar effort, would have raised $77 per capita for which its tax credit would have been $15.60 per capita (compared to a credit of $38.60 per capita for New York). If Mississippi tried to raise as much per capita as New York through state-local individual income taxation, it would have to make an income-tax effort greater by 80 per cent.

The conclusion to be drawn is simple and obvious. An income-tax credit, whatever its merits, would do little for governments in "poor" states. The gap in financial strength between them and the richer states would be widened. The credit is *not*, therefore, an alternative or substitute for revenue sharing.

PERMANENT GRANTS?

The Federal Government has been a prolific donor of categorical grants. In a dynamic federalism which, over time, becomes economically integrated, services once wholly of state concern take on some national characteristics and justify federal intervention. Conditional grants offered a method by which provision of such services is left in the hands of state-local governments, and yet these governments are induced to lift the quantity and improve the quality of the provision.

At present the opinion is widespread that categorical grants have been overutilized; the amount spent on them rose from $7.9 billion in 1950 to $24.4 billion in 1970, and the number grew from 160 to more than five hundred. Growth in their complexity, while not quantifiable, has surely outpaced the growth in numbers. A formidable information gap has been created because state and local officials cannot know what is available; "gamesmanship" has been stimulated, and this enables the alert rather than the deserving government to secure federal money. The Federal Government, misled by its superior fiscal power and by a centralist bias, has substituted its preferences for those of the states. It has distorted the pattern of state-local spending by imposing controls that were too detailed and also inappropriate to the diversity of state-local needs. Expanded use of categorical grants is not, therefore, an acceptable remedy for the fiscal imbalance of the American federalism, and yet pressure for expansion will be unremitting until it is relieved by revenue sharing.

Numerous state and local services in which there is no significant national interest do not receive federal grants and this is as it should be, since federal conditions and rules with respect to them would be worse than useless. Federal rules must be *uniform* across the nation in an effort to establish minimum standards of performance. The Federal Government cannot devise and apply *different* standards from state to state, and yet, for many services, different standards are appropriate. Diversity in performance is necessary because needs are diverse.

Those services which do not, and should not, receive conditional grants are, let it be emphasized, important to state and local governments. When the level and the quality of performance are low—as is surely the case in some states simply because of fiscal poverty—the remedy is to be found in revenue sharing by which grants without strings are distributed to state and local governments on a basis which is somewhat revenue equalizing. That is, the amounts allotted to a poor state ought to be in excess of federal revenue collection from it to finance the grant, and, conversely, the amount allotted to a rich state ought to be less. How much revenue equalization should be provided is an intricate and controversial question concerning which reasonable men will differ. The scheme recommended by the Administration—allocation by states mainly on the basis of population so that the per capita grant of each state is equal—is somewhat equalizing because the revenue for the grant, raised by a progressive federal tax system, comes disproportionately from rich states. When the Federal Government collects $1 in taxes from the average resident of the nation, it collects more than this—approximately $1.48—from the average resident of Connecticut, and less than this—approximately 46 cents—from the average resident of Mississippi. Allocation of the grant on the basis of population has also the merit of objectivity; the share of the aggregate grant for each state is determinate.

A feature of the Administration scheme which draws the fire of Mr. Fredericks is that the money for revenue sharing is to be provided through a "permanent appropriation." This will, he declares, limit congressional discretion with respect to annual budgeting and "result in permanent diminution of the Congress' role as a counterbalance to the Executive." The clause quoted has a touch of hysteria. The intent of a "permanent appropriation" is to give some automaticity to annual provision of the grants: The Treasury Department would not have to go annually to the Office of Management and Budget asking for an appropriation for revenue sharing, and OMB, in turn, would not have to go to the Appropriations committees. Surely it is reasonable that the fifty states and thousands of local governments be given assurance of provision of their annual grants. But any Administration can recommend, and any Congress can enact, legislation modifying or repealing revenue sharing; no Congress can bind a later Congress.

The most plausible criticism of revenue sharing is that it infringes the principle of financial responsibility. The principle, strictly applied, would not tolerate any intergovernmental transfers, federal to state and state to localities. But if, as is inevitable, an imbalance exists, must not the principle of financial responsibility be compromised?

In the area of public finance this is standard practice because its principles are relative and overlapping. Each principle must be applied with due consideration of how to accommodate it with other principles. The principle of equity in taxation will, for instance, sometimes yield to administrative feasibility and to revenue productivity; revenue productivity will, at some point, yield to equity and convenience. Conflicts arise, similarly, with respect to the principle of financial responsibility. If, as it dictates, each level of government should finance itself, either the amount or the quality of services provided by poor governments will suffer. The principle of horizontal equity, which declares that equals should be treated equally by government, is violated. Revenue sharing offers a way to reconcile and compromise this conflict between horizontal equity and financial responsibility.

"COOPERATIVE FEDERALISM"

What is the *extent* of the breach of financial responsibility which is contemplated? The Administration bill proposed for 1971–72 general revenue sharing amounted to $5 billion. In that year state and local governments would be spending approximately $160 billion, of which 85 percent would come from their own sources of revenue and 15 per cent as intergovernmental revenue. Revenue from own sources has, recently, increased by $8 billion yearly.

Is it plausible to argue that the addition of $5 billion through revenue sharing would change either the method or the quality of budgeting appraisals by state and local officials? Conscious as they are of numerous unmet demands for expenditure, they would allocate the $5 billion provided as an unconditional grant by the techniques used to make other budgetary decisions. To assert this is not to deny that if all or much of the revenue of state and local governments came as unconditional grants, so that little or no tax discipline accompanied their spending decisions, state and local financial responsibility would be impaired. But no such situation is created by unconditional grants which, at the outset, would add 3.1 per cent to total state-local revenue.

The objection may be raised that a grant of $5 billion would be a foot in the door. Is there reason to expect that this type of grant would get out of control? Unconditional grants, in the mind of Congress, will be alternatives to larger direct federal expenditure or to reduction of federal taxes, and the kudos to be gained from these alternatives will usually be more apparent than from expansion of unconditional grants.

State-local governments will, to be sure, *request* larger grants. But their political power in Washington has been principally negative. They muster a sturdy opposition to measures they dislike; they have not been effective proponents, and it is hard to see how establishment of an unconditional grant would alter their political leverage. Care should, of course, be taken in the design of the grant. If state-local governments could add to their spending in full confidence that this would augment their grants, fiscal irresponsibility would be manifest. But a grant design, such as that proposed by the Administration, is insulated from any such temptation, since both its annual aggregate amount and its distribution among the states are determined by a formula.

A federalist in the 1970s is plagued with anxiety concerning the problems of American federalism. History will inform him that the course of federalism has seldom run smooth, and that, periodically, for more than 180 years, similar worries have been endemic. While this information will be a consolation, it should not be a sedative. It would be rash to allow beliefs—not to say dogmas—rooted in past experience to retard search for ways by which American federalism can be strengthened. The search should be for improved techniques of federal-state-local fiscal cooperation.

The old concept of separation of governmental functions, federal and state-local, should be replaced by the concept of cooperative federalism. Sometimes the Federal Government, through the conditional grant, will stimulate and coordinate performance of services at the state-local level. This valuable device should not, however, be overapplied, as it has been in the United States in recent years. A corrective move would be provision of unconditional grants, allocated by a formula favorable to the poorer states. For a very considerable range of state-local services, differences in preferences should be respected, and, within limits, expression of these diverse preferences should not be impeded by differences in fiscal strength. Such differences should be reduced through grants which are distributed without reference to the purposes for which they may be spent.

THE EFFECTIVENESS OF PHASE II?

Mr. EAGLETON. Mr. President, I receive correspondence from my constituents every day commenting on their personal experience with the ineffectiveness of the Phase II controls. Some citizens, however, do more than write letters. There are groups in Missouri, as I know there are in all other States, which have formed to help monitor violations of Phase II guidelines. Such a group is the St. Louis Price and Rent Compliance Committee.

Only 3,000 Internal Revenue Service personnel have been allocated to play the watchdog role over this vast and com-

plex economy of ours. I applaud the citizen groups which have aided this effort. Moreover, I think it may be helpful to note the observations of these groups now that we have passed the 4-month mark of Phase II.

Mr. President, I ask unanimous consent that a letter sent to me from the St. Louis Price and Rent Compliance Committee be printed in the RECORD.

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

ST. LOUIS, MO.,
March 14, 1972.

Hon. THOMAS F. EAGLETON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR EAGLETON: After four months of intensive and often exasperating effort to assist the Federal Government in enforcing price and rent controls of Phase II, the St. Louis Price and Rent Compliance Committee has concluded unanimously. . . .

1. The control mechanics for Phase II are so thoroughly loopholed that there are, in effect, no controls at all—

2. The Internal Revenue Service is and has been totally ineffective in performing its designated enforcement functions, and

3. If, and we consider it unlikely, Phase II has brought any relief to consumer food budgets, that relief has been obliterated in whole or in part by the runaway price of meats.

Aware that the regulations originally drafted by the Cost-of-Living Council were so complicated and abtruse that the consumer was excluded as an effective monitor of pricing, our committee encouraged the public through news media and extensive pamphleting to direct suspected violations of Phase II price and rent controls through two offices it established in St. Louis.

By January 11, 1972, the date the Cost-of-Living Council declared the results of such investigations were to be made public, our committee had processed and filed a large number of complaints with the Internal Revenue Service. These complaints concerned suspected violations in food, drugs, clothing, rents and hardware.

Enclosed you will find copies of our complaints and the answers of I.R.S. The results of the I.R.S. investigations are written on the lower left hand side of each page. We feel the large number of increases that were allowed based on "increased cost" at the point where products are unregulated needs further investigation.

The three labor bodies, The Greater St. Louis Labor Council, AFL–CIO, the Teamsters Union and the United Auto Workers, which have staffed and funded this committee take affront when their efforts to assist in making President Nixon's economic program effective, are treated with disdainful disregard by the federal agency designated to enforce an area of that program.

Our committee has been dismayed at the impudence food retailers have demonstrated in increasing their prices since the beginning of Phase II.

We have worked closely with Housewives Elect Lower Prices (HELP), which as you were earlier informed, conducted surveys to assess the impact of Phase II on food prices. Our own research in this area supports that group's graphic indictment that Phase II has been totally unsuccessful in inhibiting food prices increases.

HELP's survey of 40 items, including meats, produce, dairy and staple products reveals food prices rose 3.59 percent between Nov. 12–13, 1971 and Jan. 28–29, 1972.

While these surveys indicate Phase II has brought no relief to the consumer in food purchases, the unregulated price of meat alone, certainly would have obliterated "any possible" gains to the consumer in controlled items.

Meat prices rose during this period by 9.05 percent, and since estimates of the share of meat purchases in the average consumer food budget amount to 25%, this proves any relief consumers could have received from controlled items, have been smothered by meat.

The price of meat, as you are probably aware, has risen so drastically during Phase II, that many consumers, particularly those doomed to a life on low income, have had to switch to some substitute in order to provide their families with minimum protein requirements.

In light of the above, we encourage you to consider a Congressional Investigation of . . .

1. The effectiveness of Phase II in curbing inflationary price increases . . . .

2. The effectiveness of the Internal Revenue Service as the enforcement agency for Phase II price and rent controls, and

3. The cause and effect of runaway inflation in meat prices.

We encourage investigation of these matters, of course, with the hope they will lead to corrective legislation.

We also ask that you give this committee an opportunity to further expand on these matters, and suggest a meeting with you and other Senate and Congressional representatives of Metropolitan St. Louis during the Easter recess of Congress. With personal regards, we are

Sincerely,

HAROLD J. GIBBONS,
President, Teamsters Joint Council No. 13.

KENNETH WORLEY,
Director, United Auto Workers, Region V.

OSCAR A. EHRHARDT,
President, St. Louis Labor Council, AFL–CIO.

CURRENT U.S. POPULATION

Mr. PACKWOOD. Mr. President, I would like to report that according to current Census Bureau approximations, the total population of the United States as of April 1 will be 208,968,538. This represents an increase of 115,694 since the first of March, roughly the size of Albany, N.Y. It also represents an addition of 1,916,524 since April 1 of last year, an increase which is equivalent to three new Bostons.

RECYCLING—ADDRESS BY SENATOR MOSS BEFORE NATIONAL ASSOCIATION OF SECONDARY MATERIALS INDUSTRIES

Mr. EAGLETON. Mr. President, the National Association of Secondary Materials Industries held their annual convention in Los Angeles March 17. The keynote address was given by Senator FRANK E. Moss, who chose the subject "Recycle or Perish: The Challenge to Business and Mankind."

The speech zeroes in on the central problem now facing the country regarding solid waste: In spite of the public attention and the extensive rhetoric given the subject, we have not adopted policies that encourage business to attack this problem. Our governmental policies actually hamstring the recycling of products by, for example, imposing higher rate charges on the shipping of such material and by providing tax preferences for the use of virgin resources.

I commend the reading of this speech to Senators and to the public at large.

I ask unanimous consent that it be printed in the RECORD.

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

RECYCLE OR PERISH: THE CHALLENGE TO BUSINESS AND MANKIND

It is a great pleasure and a great honor to be with you this morning. I have chosen as the subject of my talk: "Recycle or Perish: The Challenge to Business and Mankind."

I am very much encouraged by all of the attention which is being paid to recycling these days. In fact, there are times when I would like to have a bit of recycling myself—particularly after weeks like this last one in the United States Senate. On Tuesday, we took eight roll call votes just trying to adjourn for the day.

The late Adlai Stevenson, who always managed to say something better than anybody else, once warned us:

"We travel together, passengers on a little space ship dependent upon its vulnerable supplies of air and soil . . . preserved from annihilation only by the care, the work, and the love we give our fragile craft."

This warning is enormously relevant for our present generation. For we have wrought more change in our environment than all other generations in the history of the world.

Someone must pull us out of the mire which we have created. All of us look to you for substantial help. In many ways the work your companies are doing epitomize the philosophy which will preserve the earth. You have discovered that the residue from our affluent society is not a solid waste, but a wasted solid. You may call yourself a "secondary" industry, but in my mind you are "primary"—up front and center—in this fight.

America has been described as a nation, knee-deep in garbage, firing rockets to the moon. Unless we turn to you and your services, we will choke on our own debris. You were recycling our wastes decades before the term "recycle" earned a spot in the dictionary—now you belong to an "in" profession.

So, this ought to be a smiling crowd with pockets bulging from profits created by the sweeping ecology movement of today. After all, the first Earth Day was almost two years ago. Since that time, thousands of words have been written and spoken, hundreds of protest miles have been marched, Congress has passed sweeping new legislation, and almost everyone has accepted the need for ecological balance in our life-style.

Many of you *are* succeeding as recyclers. But you succeed by meeting the laws of supply and demand; by dealing with the economic realities of day to day business existence. Unfortunately the ecology movement has not produced a huge bounty for the recycling industry. The figures, in fact, produce shock and disillusionment.

Paper is one half of the municipal solid waste problem. We should expect, then, that the amount of recovered and recycled paper would have increased significantly in the last few years. The facts, however, do not bear out this expectation. The paperboard industry, the largest user of recycled paper, has in recent years reduced its use of recycled paper in percentage terms. In ten years, the amount of recycled paper used by the paperboard industry has slumped from 42% to 28%.

Cheap, easy, quick transportation is vital for the recycling businesses. But has environmental awareness led to favorable freight

rates? Definitely not. In the past twelve years, the railroads have *increased* preferential treatment of virgin materials, but ignored recycled materials. In 1960, recycled materials had to pay 13.9¢ per hundred weight *more* than virgin products. By 1971, through a series of definite and regular steps, the difference paid for recycled materials over virgin materials had actually increased to 18.6¢ per hundred weight.

Nor has the environmental movement had any substantial impact on some of the other crucial economic factors that are the lifeblood of your efforts. Many of the crucial indicators measuring the health and well-being of the recycling industry are moving in the wrong direction. This is a bitter pill to swallow during a period when we hear constantly that we are beginning to make progress.

Can the secondary materials industries survive? If you cannot, then our spaceship earth cannot. You are a barometer of the sanity of mankind.

This morning I would like to discuss some of the prospects for your success and for the survival of man. I would like to talk specifically, and I would like to talk generally.

No other forum provides the opportunity for this as well as your convention. There are tremendous philosophical questions to be discussed, and there are detailed steps that must be taken to carry out any philosophical changes. The two must be discussed together.

Barry Commoner, one of this country's leading ecologists, has pointed out that "nothing can survive on this planet unless it is a cooperative part of a larger, global whole." He points out that life as it first came to being on this earth, was initially following a self-destructive course. The first organisms known in history consumed their own nutritive base. They were headed for destruction as soon as their supply ran out. The waste products were useless to these first organisms.

Perhaps the first great step in evolution occurred when new life forms sprang into being that converted these wastes into useful new organic materials. The first recycling had begun.

Mankind must now socially engineer another crucial step in the work of evolution. We know the dimensions of the problems now facing man. The explosion of the environmental movement into the public consciousness is the result of a creditable forecast of catastrophe if we continue on our present course.

Yet we do not seem to be making adjustments fast enough. To be sure, there are hopeful signs. There are imaginative pieces of environmental legislation tucked away in virtually every committee of Congress these days. But that is just the problem: they remain tucked away. We have not moved very far to halt our burial in waste.

You can be the ones to help turn us from the path of resource exhaustion toward a continuous cycle of use and re-use.

Some may consider this suggestion as unrealistic. They will point out that until our population growth is controlled we are going to "self destruct" our own space capsule—the earth on which we live.

Now, it is true that population growth must eventually be stabilized. But population stabilization alone will not stop the kind of massive technological pollution that has grown so rapidly in this country since World War II.

Why have I selected World War II as a beginning? Because that point serves as a watershed in history. Most of the non-degradable products now threatening to suffocate our landscape were developed and put into production after World War II.

The amount of pollution produced per person since World War II has grown seven fold! Over that same time period, population has grown less than 50 percent, and income has grown about 50 percent. So you see that the technological problem is the most paramount aspect of the post-world War II environmental crisis.

It is the kind of products we buy, rather than the amount we buy or the number of people buying, that has caused most of our recent pollution. Do you remember when Premier Khrushchev toured the United States with President Eisenhower? He was fascinated with the wide variety of individual packets, fancy packaging, plastic containers, and innumerable non-degradable gadgets. At that time we were proud. But we now recognize that such packaging is a mixed blessing. It brings grave consequences for the ecological and resource balance of this planet.

Let's look at the increased consumption of beer bottles from 1950 to 1967. The total consumption of non-returnable beer bottles grew rapidly in this period. In fact, it jumped 595 percent. Now you might think by this figure that we had become a nation of alcoholics in a short period of seventeen years! But the actual *consumption* of beer, increased by only 37 percent. Population increased almost 30 percent during the same period.

So it is obvious that the actual consumption of beer grew only slightly. But the environmental impact of the container for that beer increased by 408 percent! It was not increased affluence or population growth that caused this jump. It was the development of a new product by our scientific technological society.

Current estimates of scientists are that population growth accounts for approximately 18% of the pollution increase since 1946. Increased wealth accounts for another 5 percent, except in the area of passenger travel where it rises to 40 percent.

The rest of the pollution increase, the overwhelming part, comes from the introduction of nonrecycled products that are built on a new technological base.

Why have we reached this position?

For decades we have used an incomplete accounting system in our economy. We have said that there is a category of "free goods" available for the taking. But now we must move from a "frontier economy" to the thriftiness of a spaceship system. In the frontier, resources were there for the taking, and we took and we dumped our wastes. But in a moon capsule, there is no room for a city dump.

The plastics industry did not have to include in its cost sheet the tremendous expenditures of solid waste disposal. Business that relied on the depletion of scarce resources, whether biological or mineral, did not see that they were borrowing from nature. Society will have to repay the interest and the principal at a later date.

This "cowboy economy" attitude blocks the development of secondary materials industries. How can anyone expect you to compete when tax policies encourage paper companies to manufacture with virgin timber instead of recycled paper products?

Hearings during the tax reform efforts of 1969 revealed that paper companies, on the average, paid 5 percent less in taxes than other manufacturing industries.

The rhetoric of the ecology movement has yet to reach the realities of the marketplace. When tax policies encourage this kind of activity, it is little wonder that the share of the market received by recycled paper has declined.

The profit and investment cycle presents another thorny problem. To make a living, a farmer is forced to invest in so much nitrogen that it ensures pollution. Investment in fertilizers and pesticides yields a much better return than investment in farm labor and machinery. Under our present system, it actually pays to kill the goose as long as the golden eggs brings enough money to buy another goose.

There is a direct conflict of interest here, and let no one deceive you about that. Your own executive vice president, Mr. M. J. Mighdoll, eloquently has testified before Congress about the direct confrontation of interests that occurs when we discuss recycling. He told one Senate subcommittee that (and I quote) "advocates of status quo policies are really suggesting that we do not disturb their present business and marketing orientations. Can our Nation afford such vested-interest thinking?" (close quote)

When we attempt to change basic attitudes—when we attempt to redirect a portion of our economic theory—when we say that every new product coming down the pike is not necessarily beneficial—then we run head on into interests that will be angry. They will fight us every inch of the way.

New York City recently attempted to use a new law passed by the State legislature allowing taxes on different packaging products. The city council was crushed by heavy pressures from members of the container industry opposing these new changes. These opponents killed most of what had been proposed.

Now, I understand why people don't want to pay additional fees. But I also understand that as a nation and as a species desiring to remain on this globe, we must unite and persist until such costs are accounted for.

I think it helps to discuss these problems. But I also believe we must face up to the need for creating solutions.

The first solution issue is basic to a democratic form of government. We have not yet broken the "attitude barrier". In spite of all the debate, discussion and speeches, we are still not getting through.

The General Services Administration of the Federal Government has only slowly and reluctantly published new guidelines for the use and recycled materials in paperboard products. I applaud this action, but I believe that the percentage amount of post-consumer waste materials could be doubled in the re-constituted materials with little or no effect on the quality of the product.

Even in my own domain, the United States Senate, we have a great distance to go. I have a bill that would require the use of recycled paper in the printing of the CONGRESSIONAL RECORD. I have another bill that would make it possible for senate offices to requisition recycled paper. Amazingly, senate offices do not now use recycled paper. These bills still await action by the rules committee.

As an attempt to help this effort get moving, I asked the senate stationery store to stock some recycled paper. I use that paper for constituent mail and also use recycled paper in my newsletters.

What about other senate offices? The experiment was a flop! Why? Because attitudes have to be changed, and because the price of the recycled paper is higher than that of the virgin stock. At least this is what the supply operators have told me. Orders have to specify recycled paper, and few offices have bothered.

This is only one small example, but it shows the shape of our battleground. Segregation of recycled materials must end. Second-class treatment must end. And we must make recycled materials the easiest and cheapest to obtain, not the hardest.

Your own association has recently called for a revision of tax laws so that recycled materials might get at least the same treatment as virgin resource materials.

I believe that you have been modest in your request. I can see no reason why recycled materials should not be given an actual advantage. Even with a definite advantage, the inertia of the present system is likely to continue. You have found that

political speeches do not translate into profits. Until we actually gain the tax incentives necessary, the virgin resources industries may always have a preference advantage. Society cannot tolerate this for long without reaching the point of no return.

Another word about the population explosion. Population growth must be stabilized. The recent report of the president's commission will do much to stimulate discussion on this topic. But an approach based solely on population control when resources are still sufficient to support the population is, in the words of one observer, "equivalent to attempting to save a leaking ship by lightening the load and forcing passengers overboard. One is constrained to ask: Isn't there something radically wrong with the ship?"

We can repair the ship significantly by encouraging the kind of work that you and your industries do. We do not yet have to require that the passengers go overboard.

All too often we face old attitudes when we introduce new solutions. When a new product is introduced, we ask few questions. But what happens when we introduce an idea for controlling the side effects of that product? Opponents delay and delay. I say it is time to thrust forward with some changes in federal government purchasing policies, tax policies, and with I.C.C. freight charge policies. The first efforts may need refinement. But we must get on with the job.

There is hope. There is room for optimism. More voices are heard, more proposals are brought forward, and more attention is focused on the "new evolution" that your activities provide. Remember, we are calling for a change in the course of history, and such things do not occur overnight.

I am confident that if we maintain a united effort, your hopes and my hopes will not simply become more effluent under the bridge. I am optimistic. I suffer no illusion that changing the direction of product uses will be easy. It is a difficult endeavor. But we must remember that our country has focused on this issue with an explosion of interest that has surprised virtually everyone. If we can maintain this momentum we will surely learn to recycle our resources, control our technology, and preserve this small but fragile space ship—this wonderful earth.

We have talked long enough. It is time for action, and I would like to close with a story that makes this point very well. It is about a family that spent a summer visiting their grandmother in the South. As part of the summer's activities, the girls went with their grandmother to a summer bible school.

Now, one part of the summer program was the completion of a weaving project, and this was the girls' favorite activity. But as the summer wore on, the girls began to fret and worry. Finally one of them couldn't hold it in any more, and turned to her grandmother and said: "If we don't cut out some of this singing and preaching and praying, we ain't never gonna finish this basket!"

We have preached and prayed long enough on the recycling issue. Now we need "to finish the basket." Thank you.

PAUL DOUGLAS AT 80

Mr. PERCY. Mr. President, I invite the attention of Senators to the 80th birthday on Sunday of a good friend of the Senate, Paul Douglas, who served in this body for 18 years.

At age 80, Senator Douglas remains as alert and interested in the world around him as he always was. He is looking forward to the publication of his autobiography in April; he retains his interest in the causes which he championed here in the Senate—national defense, civil rights, consumer protection, and care for the elderly. He was a dedicated servant of the people of Illinois, but his concern for people's well-being went far beyond the borders of our State.

Mr. President, I have never known a more honorable man than Paul Douglas. I was once involved in a political campaign with him, and I can assure you that no one could have had either a more formidable or a more decent opponent. This year, as I face a campaign for reelection, I have expressed publicly the hope that this year's senatorial race in Illinois can be conducted with the same dignity and desire for public edification that I believe marked the 1966 campaign.

Many years ago, Paul Douglas was my professor at the University of Chicago. I enjoyed his thoughtful presentations in the classroom, but I must confess I had no idea then that Paul Douglas would be teaching me all the rest of my life. Through the years he has been a teacher to me in many ways—first on the campus, but, even more important, he has been an example of a man called to public service by the highest goals, a man who has lived his life with integrity, a man whose genuine interest in the well-being of others is his guiding principle.

I congratulate Paul Douglas on the occasion of his 80th birthday and I join all my colleagues in wishing him and his distinguished wife many more years of good health and happiness.

Mr. President, I ask unanimous consent that two articles about Senator Douglas, published in the Washington Post and the Chicago Sun-Times, be printed in the RECORD.

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

[From the Washington Post, Mar. 26, 1972]

PAUL DOUGLAS: REFORMER AT 80

(By Jean M. White)

A touch of mellowness, perhaps, that comes with the years, but the eyes are the same—the blue, piercing eyes that fixed evasive Senate witnesses; the same great shock of white hair; the same resonant voice that reached into the Senate galleries; the same mind—quick, lively, searching.

And still that same passionate concern for social Justice and the righteous indignation at wrongs and chicanery.

"I say it because it is true," former Sen. Paul H. Douglas snapped tartly after he was gently reminded that perhaps an interview on the eve of his 80th birthday was not the time to recall bitter fights with two former colleagues over civil rights and reapportionment.

Sen. Douglas will be 80 today. It is a landmark in any man's life, but his birthday also is a landmark for the American liberal conscience.

Unlike Miniver Cheever, Paul Douglas was born too early, not too late. There were long, lonely years when he was a crusader for causes then unpopular to advocate, causes that come to be accepted in legislation touching the lives of every American—social security, tax reform, truth-in-lending, aid to education, area redevelopment, housing, minimum wage, and, above all and always, civil rights and liberties.

Fortunately, for us and the Senator, he has lived long enough to become a prophet with honor.

Today a small circle of old friends will gather at the cheerful home at 2909 Davenport St. NW to share the 80th birthday with Sen. Douglas and his wife. Later will come a "queen's birthday" celebration in June when the sun warms the patio in the back.

A stroke 2½ years ago has left Sen. Douglas confined in a wheelchair, but only physically. The confinement does not extend to his mind or conscience.

The former Democratic senator from Illinois still percolates with stimulating ideas and questions, gets outraged at injustice ("I never knew a man who could get so outraged," a retired Senate reporter recalls), and talks vigorously about present problems and future needs—urban ills, federal-state-city relations, congressional reform. His wife, Emily Taft Douglas, a handsome, gracious woman, herself a former congresswoman, arranges the late-afternoon discussions that keep her husband in touch from his wheelchair.

Once the 80th birthday is out of the way, there are busy months ahead for Paul and Emily Douglas: Publication in mid-April of his 670-page autobiography, dedication of the Paul H. and Emily Taft Douglas Library building at Chicago State University, and then perhaps a sentimental Journey back to to the Indiana Dunes country, that wild area along Lake Michigan where the Douglas family spent its summers, later to be saved by the senator as a national lakeshore park.

The autobiography—revised in longhand on yellow legal pads after the senator suffered his stroke in August, 1969—bears an apt title: "In the Fullness of Time: The Memoirs of Paul H. Douglas."

The memoirs of Paul Douglas should make quite a story as a reflection of American politics and life in the first seven decades of the 20th century.

It is the story of a professor in politics, a distinguished economist-scholar (the Cobb-Douglas Function, see economics textbooks) who ventured into the harsh reality of everyday politics as a city alderman from Chicago's South Side and specialized in problems of garbage collection.

It is the story of the 50-year-old patriot who, defeated in his first run for the Senate, enlisted the next day as a Marine private, won the bronze star and two purple hearts in landings in Okinawa and Peleliu and was left with a withered left arm from his war wounds. It is the story of the Democratic senator from Illinois, elected on his second try in 1948, who became the liberal goad of the Senate, always in the forefront of the fight for social advances in the crucial years of the 1950s and 1960s.

And it also will be the story of Paul and Emily Douglas, two people who share deep affection for each other and politics.

"I was the only man who ever succeeded my wife in Congress," Sen. Douglas likes to point out.

"Paul, why don't you say I was the only woman who ever preceded her husband in Congress. It's women's lib these days," Mrs. Douglas corrected her husband the other day.

Emily Taft Douglas, a former actress, served as congresswoman-at-large from Illinois with the same constituency her husband was to represent when he was elected senator in 1948.

Rugged, slouch-shouldered and bespectacled, the economics professor came to Washington and soon plunged into the midst of the early battles for social and reform legislation that came out of Congress in the following two decades. But he was too much of a maverick ever to become part of the Senate's inner circle. Douglas has a dramatic flair, which he employed effectively to focus attention on the causes he was championing.

There was a time that he wanted to take a hatchet and scalpel on the Senate floor to demonstrate the difference between hacking and surgically pruning a budget.

"His staff talked him out of that one," recalls Howard Shuman, who was the senator's

administrative aide for 14 years and now holds the same post with Sen. William Proxmire (D-Wis.).

"But he did go on the floor with a huge magnifying glass once. The public works bill was up for vote, and projects are sacrosanct to senators. Anyway, the senator came into the chamber carrying a magnifying glass and a large map. It seems there was a river—in New England, I think—mentioned for an appropriation and the senator couldn't find it on the map."

Shuman remembers Douglas as "an absolutely honest man," even to avoiding the phone calls that can swamp a senator's time.

"When he couldn't take a phone call, before he would have his secretary say he was out of the office, he would open the door and step out into the hall. I've seen him do it numerous times."

Once William McChesney Martin, disturbed over remarks attributed to Douglas in criticism of Martin's fiscal policies, came up to the Hill to check with the senator personally.

The senator told him: "I honestly don't remember saying that. But I've thought it a number of times so I suppose I could have said it."

But the senatorial career of Paul Douglas has more substance than a collection of lively anecdotes. It is a career threaded with landmark legislation on the big issues that the nation faced in the 1950s and 1960s. Perhaps the most dramatic was the long fight for civil rights, crowned by the sweeping Civil Rights Act of 1964.

"As for 1964, that was done years earlier—that was done in the hard years when we could get only 20 votes or so," Douglas points out "What was heresy then, the nation has accepted, intellectually at least. Now remains the pain of working it out."

Despite the acrimonious legislative fights and his lonely crusades, Paul Douglas does not look back in anger or bitterness today.

"If he was righteous in causes, he was never selfrighteous about people," Shuman says.

And the senator still has the buoying hope that sustains reformers.

"Well, I'm not a pessimist," he said the other day. "It's a great source of relief in bowing out of politics to see new men and good people coming up."

In the Senate, he points to such men as Proxmire, Alan Cranston of California, Adlai Stevenson III (whose father ran for governor of Illinois on the same ticket with Douglas), Walter Mondale of Minnesota. And Douglas always remembers Sen. Hubert H. Humphrey, who fought by his side in many of the old battles.

Among the governors, Douglas singles out Florida's Reubin Askew and Ohio's John J. Gilligan as "absolutely fine men."

Douglas also sees promise in the young people. "We had a bad convention in 1968. But I see healthy signs with the younger people working in politics, social causes, environment."

If some of the Douglas causes have come in the fullness of time, there are those still being fought: cloture in the Senate, the family allowance (Douglas proposed this idea as a young economist in 1925), pollution, consumer protection, the vanishing wilderness of areas like the Indiana Dunes, disclosure of campaign financing, tax reforms.

When he talks of tax loopholes today, there are flashes of the old Douglas indignation.

"I think they say we—Lister Hill of Alabama was with me—have saved the nation $4 billion up to now in blocking a clause that would have allowed offshore drilling in the open ocean to take oil," the senator points out.

In 1967, at 75, when he was no longer a senator but a private citizen, Douglas journeyed to Colorado to inspect the oil shale deposits there.

The year before, defeated in his try for a fourth term in the Senate, Douglas had made a graceful exit, giving a final accounting of his assets and income and thanking the voters who had kept him in office 18 years. It took two farewell parties for all his friends and admirers to pay tribute.

In that race, Douglas campaigned with his usual vigor. But there was his age—he was 74 and his challenger, Charles H. Percy, was 47, with the attractive face of new Republican liberalism. There was the race backlash. And there was the deteriorating war in Vietnam, in which Douglas had been a firm supporter of the Johnson administration.

A pacifist in World War I from his Quaker upbringing, Douglas had gone to Europe in the 1930s and was in Italy when Mussolini sent his legions into Ethiopia. He warned of appeasement of Hitler. During World War II, he was an enlistee in the Marine Corps, accepting a commission only to get into battle when he saw they were not going to send 50-year-old riflemen overseas for combat.

He still believes in collective security, of "keeping our guard up while exploring the possibilities for peace."

After his 1964 defeat, Douglas went back to work in a double harness. He returned to teaching and served as head of the National Commission on Urban Problems, making a study at the time the incendiary cities were flaring up in riots and racial turmoil.

Soon after the Commission on Urban Problems made its report, the stroke hit the senator's right side. His recovery was complicated by his war disabled left arm and a fall abetted by a football knee (Douglas played center on the Bowdoin College team while winning a Phi Beta Kappa key.).

In 1969, he returned a $5,000 check that went with an AFL–CIO award. While in the Senate, Douglas had set a $2.50 limit on the value of any gifts he would accept, and he is a man who holds firm to a principle.

If the "18 most stimulating years of my life" were spent in the Senate, Douglas also had several decades of achievement before he entered the Senate at 56.

As a distinguished economist, his applied work on the theory of wages and production is one of the bedrocks of contemporary economic analysis. The Cobb-Douglas Function—a mathematical formula set forth in the 1920s—is discussed at length in the recent Nobel Prize-winning work of Prof. Paul A. Samuelson.

"I once was an economist," the senator says now with a rueful smile. "They are now feeding information into the computers at Brookings Institution and coming out with figures to support the formula."

Born in Salem, Maine, March 26, 1892—the New England twang has been leveled a bit by the Midwest plains—Douglas remembers when mill workers in Newport, Maine, were told not to vote for Bryant and the factory whistles sounded for 24 hours when McKinley was elected.

"And I grew up feeling it was . . . well, improper," he once told an interviewer.

He was a friend of Jane Addams and Clarence Darrow. He helped organize the steel workers. Even before entering politics as a Chicago city alderman in 1939, he was one of the earliest advocates of old-age pensions and unemployment insurance in the 1920s and 1930s, working with then New York Gov. Franklin D. Roosevelt and Pennsylvania Gov. Gifford Pinchot.

Now, the autobiography finished, there will be two labors of love for the 80-year-old economist and former senator.

First, another look at the theory of wages and productivity as a statistical study. Then a study of the last days, the winter years of genius, in the lives of Beethoven, Shakespeare, Michelangelo, and Titian.

"A fine subject for a crippled politician," Douglas observes.

It will be a fine subject for the senator who brought a graceful touch of erudition and scholarship to the Senate. In Douglas' former office, Suite 109 in the Old Senate Office Building, photographs of live politicians never were hung. Instead, there were studies of Michelangelo's majestic brooding figures for the tombs of the Medici and Titian reproductions.

As a campaigner, Douglas was known to quote John Stuart Mill or "Spoon River Anthology" poetry to voters at the factory gate.

The other day, on the eve of her husband's 80th birthday, Emily Taft Douglas looked fondly, but objectively, at her husband and said:

"He's a much handsomer man than the man I married. He doesn't wear glasses any more. They say we make our own faces. It is a good man that makes a good face."

[From the Chicago Sun-Times]

ILLINOIS WARRIOR REFLECTS AT AGE 80

(By Tom Littlewood)

The white-haired man with cool lucid blue eyes that have seen much of this century's pain and conflict leaned forward in his wheelchair, resting his war-crippled left arm and his disabled right leg.

"I've become interested in something that the economists and the politicians would both think very foolish: The last phase of genius.

"I've taken the bits of sculpture of Michaelangelo, his Pietas . . . he did three of them, progressively more appealing; the last paintings of Titian; the last plays of Shakespeare, notably The Tempest; and the last quartets of Beethoven and I've studied them and enjoyed them and they have meant a great deal to me. And I think they emphasize reconciliation and love. These men in the final years of their life wished to get away from pain and contest and conflict, and to accept life, and in accepting life, conquer life."

MILESTONE PASSED

In the last phase of his own individual genius, Paul Howard Douglas, noble, proud, and wise warrior of Illinois, is 80 years old today.

About a dozen close friends have been invited to a birthday dinner at the Douglas home, where the retired Democratic senator is confined most of the time in a wheelchair. In October, while convalescing from a stroke, he fell and injured his right thigh, rendering him immobile. He walks only with the aid of a walker.

Before his defeat by Republican Sen. Charles H. Percy, six years ago after 18 years in the Senate, this professor-turned politician, fought valiant and often lonely battles in behalf of issues that were on or just over the horizon: For civil rights, consumer protection, equal representation in legislative bodies, removing income tax escape holes, social integration of the suburbs, environmental protection, medical care for the aged, human renewal of the cities, and against military waste and the evils of campaign fund-raising.

His memoirs, entitled "In the Fullness of Time," are to be published by Harcourt, Brace, and Jovanovich on April 15—another highlight in the career of this economist, alderman, senator, and combat Marine veteran of World War II who was twice wounded—at Pelelieu and on Okinawa.

A MORAL ENIGMA

Throughout his long public career, doctrinaire liberals were troubled by a moral enigma that they attributed to Douglas, because of his avid anti-communism, support of the Vietnam war, and advocacy of military strength.

Obviously, such a man must have many emotional feelings about President Nixon's epochal journey to Peking. He does:

"A Democratic president could never have done it. He would be attacked by the Republicans as a traitor. Apparently only the people who don't believe in what they are doing can

afford to do it. That's quite a comment on the American public.

"While I cannot forget Nixon's behavior at the time of Jerry Voorhis and Helen Gahagan Douglas, which was really bad, I think there's a lot of good in Nixon that's struggling to come out, as well as crafty politics.

NIXON GIVEN CREDIT

"Now I'm going to take Nixon on his own terms and give him credit for it. I hope it turns out well, but there's danger in it because neither the Chinese nor the Russians have given up their belief in armed revolution."

As to his own support of the Vietnam war policies of prior administrations, Douglas said he had no regrets but did not condemn Nixon for attempting to disengage American forces.

"I suppose you can't support a colonial war for more than seven years. That was the period of the American Revolution. I have always believed in collective security. I'm not a pacifist. You've got to have force as police. I think we were moving for good motives (in Indochina), but war is a terrible thing and it may be that it swallows up everyone who goes into it."

He is encouraged by the social consciousness of the young, and believes that the rejection of integration as a goal by many young black leaders is only a temporary phenomenon.

His son John is working for Sen. George McGovern's presidential campaign, and his longtime political associate in Illinois Angelo Geoceris, is Sen. Edmund Muskie's State campaign manager. But Douglas is still eagerly for Sen. Hubert H. Humphrey, D-Minn., for president.

Since his fall in October, Douglas is not often able to leave the house. But his doctor has given the go-ahead for the Douglases to fly to Chicago June 11 for the dedication of the Paul and Emily Douglas Library at Chicago State University.

PLAZA DE LA RAZA

Mr. TUNNEY. Mr. President, a group of dedicated and determined people from the Chicano community in Los Angeles is responding to the cultural and educational needs of the Spanish speaking. By fostering the appreciation and continuing the development of their culture, they are providing an invaluable asset not only to southern California, but also to the entire country. I wish to share briefly with my colleagues the background and a progress report of this community commitment which surely merits our support and approval.

Plaza de la Raza, located in the heart of the Los Angeles Chicano barrio, is a "park for the people" where the culture of the Spanish-speaking world, with special emphasis on the Mexican heritage, can be viewed, performed, studied, developed, and appreciated. When fully realized, Plaza de la Raza, Inc., would manage and operate the development as a nonprofit educational institution for all the people.

Although Spanish is second only to English among the languages spoken in the United States, and the Spanish-speaking minority is the second largest in our country, with some concentration in the Southwest, nowhere in this country does there exist anything comparable to the Plaza de la Raza concept. Not only the majority of the American people, but also this great minority group, is deprived of the cultural enrichment to be gained from such an achievement. In a multicultural society, such as ours, we must make efforts to know the people who live in this country if we are to understand, trust, and appreciate each other. In this park, amidst the trees and shrubs, Chicanos would have the opportunity to continue developing a sense of dignity and pride in their heritage; here the formerly unaware majority could receive an undistorted image of the people it has been led to see only in the stereotypes of the movies or the commercial tourist traps. The Chicano community will no longer accept the inferior status to which it has been assigned. Plaza de la Raza provides a tremendous and constructive opportunity for all people of goodwill to build bridges of understanding and mutual appreciation.

There has been a need and a yearning for many years in the Mexican-American community of southern California for a focal point where its culture and art—and its voice—could be expressed.

Plaza de la Raza, located in Lincoln Park, is designed to be that focal point for all those with a Spanish language heritage in the southern California area.

Lincoln Park has for many years fulfilled to some degree the need for a central point of reference for the Los Angeles Chicano community.

Lincoln Park, a 50-acre plot of green lawns and trees, lies about 3 miles east of the Los Angeles Civic Center and has a rich background of public use dating back almost to World War I. In the 1920's, 1930's, and 1940's, it was visited by millions, and additional millions viewed it frequently as they rode by it on their way between Pasadena and Mount Lowe in the big red cars of the Pacific Electric Railway.

In those decades not only the Mexican-American families found delight in visiting the park, but everyone considered it a favorite recreational spot. It was the site of an alligator farm, ostrich farm, and the Selig Zoo, forerunner of the Los Angeles Zoo, now located in Griffith Park. The father of actor Anthony Quinn worked there. As a young boy, Anthony Quinn often played in the park. Today he is one of many noted personalities who are padrinos of the plaza.

The main patriotic Mexican celebrations—the 16th of September, marking Mexican independence won in 1810, and Cinco de Mayo, observing the defeat of the French under Maximilian in 1862—have been celebrated in Lincoln Park for decades. It still is the favorite locale for these celebrations today. At the western end of the park stands a towering statue of Hidalgo, the leader of Mexico's fight for independence from Spain.

Lincoln Park, under administration of the parks and recreation department of the city of Los Angeles, remained a very popular place after World War II and became more and more the favorite park of Mexican-American families. However, the boathouse was used less and less and fell into disrepair. In the 1960's the boathouse was boarded up and the lake became fouled by debris. In effect, it became a big duck pond.

In October of 1969, the parks department decided to tear down the boathouse although there were other buildings in the park which could be restored to house the staffs and facilities for a sound program of recreational activities, including a gymnasium, offices, all-purpose rooms, and a picnic pavillion.

The Chicano community raised objections at once. The parks department delayed its published intentions to demolish the boathouse, and granted time for proposals to be submitted for alternative plans.

From the very beginning the idea of a community cultural center for La Raza has brought a very favorable response from the local press, radio, and television.

Ruben Salazar, award-winning journalist who was killed in the Chicano moratorium disturbance of August 29, 1970, wrote in the Los Angeles Times early in 1970 of the need for just such a center as Plaza de la Raza. He subsequently became one of the first members of Plaza's board of directors and was very active in the cultural center's behalf until his untimely death.

As Plaza de la Raza and its aims became known, the art community began to take an active interest which has culminated in several significant events.

Individuals, groups, and various leaders in the Chicano community began meeting to discuss the problem. Perhaps the most instrumental organization in bringing various interests together and helping them to finally arrive at a concrete plan of action was the East Los Angeles Community Union—TELACU.

Early in 1970 the community's plan for a cultural center in Lincoln Park won approval of the parks department. The department suggested that land around the boathouse be leased for the new project. In May of 1970 Plaza de la Raza was incorporated as a nonprofit California corporation and work on the lease began. Offices were established at the Lincoln Heights Neighborhood Center with a staff headed by Coordinator Frank S. Lopez.

The Los Angeles City Council voted 15 to 0 to authorize the parks department to negotiate a lease with Plaza de la Raza, Inc., and allocated $110,000 for the new plaza, to be given after the backers had raised the first $110,000 by their own efforts.

In February of 1970 the backers of the project stepped up their organizational efforts, electing President Ed Bonilla and a 15-man board of directors.

The fledgling organization enlisted the support of a distinguished list of "padrinos"—sponsors—and began making plans for a fundraising drive, starting with a program in the East Los Angeles area for donations of green and blue trading stamp books.

At this time the model cities program was established in the northeast area of Los Angeles, into which Lincoln Park falls. Plaza de la Raza began negotiating a proposal for model cities funds. Proceedings led to the signing of a contract amounting to $147,000, providing moneys for first phase building, matching those of the city, as well as operating funds for 1 year. The project was approved by

the city council in June 1971 and both model cities money and the allocated $110,000 from the city were released.

Once the first phase funding was approved by the city council the final negotiations went ahead on the lease. In August 1971 the 25-year, $1-a-year lease agreement was approved by the city council and became effective 1 month later.

In October 1971 the architect's contract was approved and signed by the mayor and the way was cleared for actual construction on the boathouse to begin.

In July of 1970 the Los Angeles County Art Museum cohosted with Plaza de la Raza a highly successful showing of the Proctor Stafford collection of pre-Columbian art and an indigenous dance recital. Cooperating with the art museum and plaza in the showing which drew over a thousand people were the Mechicano Art Center—a group of Chicano artists—and the Congress of Mexican-American Unity, the largest umbrella organization in the Chicano community, representing some 300 community groups.

Shortly after the pre-Columbian art showing, Plaza de la Raza and the Mechicano Art Center began preliminary discussions with the Southern California Art Dealers Association for planning and holding a fundraising event in March 1971. The coordinator of Plaza de la Raza and representatives of the art dealers association visited Mexico in January 1971, to solicit an art work as a "centerpiece" for the March event.

The result was an original work by the world famous Mexican muralist, David Alfaro Siqueiros. Titled "Heroic Voice of our Democracy", the work is a portrait of Ruben Salazar superimposed on a portion of an existing Siqueiros mural, "Nueva Democracia."

Plaza de la Raza, the art dealers association, and Mechicano Art Center jointly produced a very successful "Paseo del Arte"—art walk—on March 28, 1971. Held at member galleries along La Cienega Boulevard and Melrose Place in West Los Angeles, the "Paseo del Arte" featured a juried show of works by Mexican-American artists, a children's art exhibit, an art presentation presented by the Los Angeles Junior Arts Center at Barnsdall Park, and dance performances by the Lincoln High School Ballet Folklorico.

Where 2,000 people were expected, 5,000 attended. Winners in the art competition were awarded prizes by such notable show business personalities as Margo and Eddie Albert, Sam Jaffee, Vincent Price, Edward G. Robinson, Karl Malden, and others, all padrinos of Plaza de la Raza. Plaza realized nearly $15,000 and an inestimable amount of shared understanding between cultures.

When Plaza de la Raza was founded it was felt then that construction would take some years to complete. Yet it was also felt that Plaza activities need not and must not be delayed until that time.

So, with this in mind in the summer of 1971 Plaza da la Raza launched a project which it saw as both a community service and an opportunity to acquaint the people more deeply with the work of plaza. This was called Plaza de los Ninos. Throughout the summer it provided on Saturday mornings bilingual, bicultural art-play experience for children of the community between the ages of 3 and 9.

Teachers, parents, musicians, artists, dancers, and noted show business personalities, gave of their talents to the children every Saturday. And the children responded with an outpouring of their own talent and enthusiasm. Contributions of refreshments and supplies were readily given for 9 weeks. Each Saturday saw at least 200 children and 50 adults participating.

In August the summer program ended. However, Plaza de los Ninos did not end in the hearts and minds of those parents whose children had participated. Sharing Margo Albert's enthusiasm, the parents put together a program of continuing Plaza de los Ninos on a year-round basis and began seeking funds.

The directors, officers, sponsors, and friends of the plaza hope that some day, in the very near future, their project will include a university of the arts, which would be a major educational institution specializing in Chicano culture. Meanwhile, its facilities will be made available to boards of education and educators everywhere on a cooperative basis.

Mr. President, we are all aware of the fact that our society includes a very substantial number of people who share the Spanish-language heritage. Indeed, many were in the Southwest to welcome our forefathers when they came to the Southwest.

Is it not logical and does it not make good sense that we should know a great deal more about such a large percentage of our citizens, our fellow workers, and our friends?

The fact of life is that a great many other cultures are part and parcel of our daily living. Our society in the United States is a multicultural one. One which can only be appreciated when we are given the opportunity of seeing each on its own merit and by its own worth.

Plaza de la Raza can help us to focus on a view which widens our appreciation and of the rich traditions and many contributions of this country's Spanish speaking citizens.

Plaza de la Raza is offering the opportunity to all of us to learn more about the second largest ethnic minority in the United States. It will encourage further achievement and contributions by Chicanos.

It will provide for the development of talent, talent that is badly needed to address itself to the many problems with which we are faced today.

It will provide for education, education which could help begin to reverse the tragedies mentioned by a Chicano in his poem, part of which tells us:

". . . remember that chicanito
flunking math and english
he is the picasso
of your western states
but he will die
with one thousand masterpieces
hanging only from his mind.

Mr. President, allow me to conclude by congratulating the efforts of the people who have helped to begin making the dream of Plaza de la Raza a reality, a reality I hope will soon materialize fully. Support for Plaza de la Raza is still needed and, of course, would be greatly appreciated. The development and the success of this worthwhile task is terribly needed not only in the barrios but also in our country.

DEATH OF GEN. FRANK FRASER

Mr. FANNIN. Mr. President, last week Arizona and the Nation suffered the loss of a fine gentleman and a great soldier. Gen. Frank Fraser died in Sun City at the age of 76.

It was my privilege to know General Fraser; he served as adjutant general of the Arizona National Guard during the time that I was Governor of the State. His illustrious military career stretched from action against Pancho Villa to World War I and World War II and included leadership in the National Guard before retirement.

Mr. President, the Arizona Republic yesterday published an editorial listing some of the many achievements of General Fraser. I ask unanimous consent that it be printed in the RECORD.

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

A VANISHING BREED

Frank Fraser belonged to that vanishing generation of Americans who fought two world wars and survived the worst economic depression in world history. His death in Sun City last Friday, at the age of 76, wrote finis to an illustrious military career.

Fraser was only 16 years old when he joined the National Guard in the state of Washington. He fought in the Mexican campaign against Pancho Villa, then went to France and saw action in such storied battles of World War I as Chateau Thierry and St. Mihiel.

Returning to civilian life, he tried his hand at cotton farming in Arizona, went into contracting for state highways, and became a cost accountant for the Kennecott Copper Corp. mine at Ray. But his heart was in the military and he remained with the Arizona National Guard during the years between wars.

Shipped overseas again in 1942, he served under Generals Patton, Bradley, and Eisenhower. After the war he was appointed military governor of Luxembourg.

Back in Phoenix again Fraser succeeded Lt. Gen. Alexander M. Tuthill as adjutant general of the Arizona National Guard. He presided over the guard's growth, and dedicated many of the new armories that sprang up around the state. In 1964 he retired, a three-star general with 49 years of service under his belt and probably more medals than any other Arizonan has ever won.

Americans have a way of ignoring their soldiers between wars. But there always has been a hard, lean corps of professional warriors who were willing to keep a military force in being despite peace-time cuts in appropriations and in the face of public hostility.

Frank Fraser belonged to that select group of Americans. He and his kind seldom receive the praise due them—but, then, they never expect it. Honor, duty, country—these are more than words in dictionaries to men like General Fraser.

OPERATION OF MOTOR VESSEL "WICKERSHAM"

Mr. STEVENS. Mr. President, the Senate and House have recently passed H.R. 10834, an act which authorizes the State of Alaska to operate the MV *Wickersham* between ports in Alaska and ports in the State of Washington until a replacement vessel can be built. The bill is of great concern to the people of Alaska and also to the people of Seattle.

Because the bill will have such a beneficial effect upon the Port of Seattle, the Port of Seattle Commission has in resolution form expressed its appreciation to the Governor and the people of the State of Alaska, the Alaska and Washington delegations in Congress, and to the chairman of the House Merchant Marine and Fishery Committee and the chairman of the Senate Commerce Committee.

Because the bill is so important to this area of our Pacific Northwest, I ask unanimous consent that the resolution be printed in the RECORD.

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

PORT OF SEATTLE COMMISSION RESOLUTION RE "WICKERSHAM" WAIVER BILL

Whereas the Congress of the United States of America has affirmatively passed the Wickersham Waiver bill allowing for the transportation of passengers and their vehicles between Alaska ports and, also, between the Port of Seattle and Alaska aboard the Norwegian built M/V *Wickersham;* and

Whereas until such time as the replacement vessel is completed and delivered, the *Wickersham* will be able to work to the full capacity for which she is capable; and

Whereas the contemplated increased utilization of this vessel will also result in vitally needed additional commerce in the movement of people and vehicles between the Alaskan ports and

Now, therefore, be it resolved that the Port of Seattle Commission meeting in regular session on March 14, 1972 hereby expresses its appreciation to the Governor and people of Alaska, the Alaska and Washington delegations in Congress and to the Chairman of the Merchant Marine and Fisheries Committees of the Senate and House for the successful passage of the Wickersham Waiver which will mean so much to the continuing exchange of people between our two states, and furthermore

Be it resolved that copies of this resolution shall be furnished to the Governors of Alaska and Washington, the President and Speaker of the Alaska legislature, the Alaska and Washington delegations to Congress and the Chairmen of the Merchant Marine and Fisheries Committees of the House and Senate of the United States Congress.

REMARKS BY DR. BRYAN KEISLER TO THE SALUDA BARRACKS 1773 AND THE AUXILIARY

Mr. THURMOND. Mr. President, On February 20, 1972, Dr. Bryan Keisler, a veteran of both World Wars, addressed members of the Saluda Barracks 1773 and the auxiliary in Saluda, S.C. This organization is composed of veterans of World War I, Inc., and the meeting was held in memory of those members who have since passed on.

Dr. Keisler was pastor of the Lutheran Church of the Redeemer in Newberry, S.C., serving in that capacity longer than any other man.

His remarks are a reminder to us that true strength and true greatness can be rooted only in the Creator. He warns that many nations have fallen when they sought to replace Him with gods of their own.

These words of wisdom are applicable to our time and our country today. I ask unanimous consent that they be printed in the RECORD.

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

REMARKS MADE AT A MEETING OF THE SALUDA BARRACKS 1773 AND THE AUXILIARY

On such occasion one is naturally reminded of the words of Abraham Lincoln when, at the dedication of the Gettysburg National Cemetery, he said, as you will readily recall. "The world will little note nor long remember what we say here; but it can never forget what they did here." But Lincoln's innate modesty and humility made him, in that remark, not only a minor but a false prophet. For while the world has indeed long remembered, and will long remember, what "they" (the "honored dead") did there, it has also assigned immortality to those noble words from the heart and the lips of one of America's greatest souls of all time.

And the world dare never forget what the American soldiers have done there—not only there at Gettysburg, but also there on the bloody battlefields of Europe, of Africa, of Asia, of the Pacific and elsewhere. There they offered their all, and thousands give their all, in the fight for freedom, for protection against the tyrants and war lords, against autocracy and aggressiveness.

We would not in any sense nor to any degree minimize the importance of any of the wars in which the United States has been engaged, but the organizations under whose auspices we are here at this time are particularly dedicated to the perpetuation of the memory of veterans of World War I, and to the high principles for which that great war was fought. Two things especially are significant about that war. In the first place, it was the first major war in which American soldiers fought on foreign soil, and, in the second place, largely under the influence of the idealist President Woodrow Wilson, it was a mighty struggle in behalf of idealism. "To make the world safe for democracy" was not only its slogan, but its worthy and sole objective.

In that struggle, as well as in all others, thousands upon thousands were crippled and maimed and killed. Heroes they were, whether still living or long dead. And we are reminded of the words of the 3rd stanza of *America the Beautiful:*

"O beautiful for heroes proved
In liberating strife;
Who more than self their country loved,
And mercy more than life!
America! America!
May God thy gold refine
Till all success be nobleness
And every gain divine."

Being a minister as I am, you will not be surprised if I interject a spiritual note. The holy Scriptures declare, "Blessed is the nation whose God is the Lord." Like Israel of old, in her weaker moments, so nations of any and all time and of all sizes, may be tempted to make other gods for themselves, and try earnestly, but vainly, to substitute them for the true and eternal God. And those other gods may take almost any imaginable form. Particularly are nations tempted to worship at the shrine of pleasure, or riches or power. And perhaps the god of power is the greatest tempter of all. Hence let Rudyard Kipling speak to us in his *Recessional* when he says,

"If, drunk with sight of power, we loose
Wild tongues that have not Thee in awe,
Such boasting as the Gentiles use,

Or lesser breeds without the Law—
Lord God of Hosts, be with us yet,

Lest we forget—lest we forget."

Yea, verily, "Blessed is the nation whose God is the Lord". In one of his poems, Alexander Blackburn asks, *"What Makes a Nation Great?",* and then answers his own query as follows:

"Not serried ranks with flags unfurled,
Nor armoured ships that gird the world,
Not hoarded wealth not busy mills,
Not cattle on a thousand hills,
Not sages wise, nor schools nor laws,
Nor boasted deeds in freedom's cause—
All these may be, and yet the state
In the eye of God be far from great.

The land is great which knows the Lord,
Whose songs are guided by His Word;
Where justice rules 'twixt man and man,
Where love controls in art and plan;
Where, breathing in his native air,
Each soul finds joy in praise and prayer—
Thus may our country, good and great,
Be God's delight—man's best estate."

Perhaps as a nation we would not be bold enough to claim to have arrived, nor perhaps as a state, nor a county, nor a community. The battle still rages. The forces on the side of righteousness may be many and great. But they are still inadequate, and will be so until all have cast their lots on that side.

Those whose memories we cherish in tender affection—those whose memories we would honor, have fought a good fight. The time of their departure came when He Who does all things well said, "It is enough." For them the bugle has sounded. It blew Taps. That same bugle is still sounding forth. But for you and me it is blowing Reveille—Awake, arise. It is time to go to work.

While such is never inappropriate, it would appear especially appropriate to pray the prayer of Josiah Gilbert Holland when he said,

"God give us men! A time like this demands
Strong minds, great hearts, true faith and ready hands;
Men whom the lust of office does not kill;
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honor; men who will not lie;
Men who can stand before a demogogue
And damn his treacherous flatteries without winking!
Tall men, sun-crowned, who live above the fog
In public duty, and in private thinking."

Thank God for all those of such calibre with whom the world is blessed. Noble souls they are, true servants of mankind and of the God of the universe. And in their ranks there is a place for you and me.

Referring to one of the earliest men of the Old Testament the Epistle to the Hebrews says, "Who being dead, yet speaketh". Listen attentively, not only with your ears, but also with your hearts and souls. Do you not hear that great chorus of voices from the beyond earnestly enjoining upon us courage, devotion to God and country, honor integrity?

WEEK OF CONCERN FOR PRISONERS OF WAR AND MISSING IN ACTION

Mr. PERCY. Mr. President, this is the week of concern for American prisoners of war and those missing in action. While I cannot overemphasize the importance of this week, I must also say that the

plight of the prisoners must be of concern to us every single day until all of them are returned home safely.

There is no issue that is of greater concern to me than the release of our prisoners; we must be unyielding in our efforts toward this end.

Often I receive letters from constituents whose loved ones are being held captive. I know the anguish they suffer and I know that they expect the Government to continue to press for the release of these men.

Our hearts go out to these families as we rededicate ourselves to achieving what they have a right to expect—the safe return of the POW's.

Mr. President, I know that all Americans are united today in prayer for the release of these men. We as elected representatives of the people should be united in our own determination to exhaust every effort to secure their release.

STATE OF REFORM IN HIGHER EDUCATION

Mr. FANNIN. Mr. President, Alan Pifer, the president of the Carnegie Corp., has eloquently discussed the state of reform in higher education in his annual report to the Carnegie board of trustees. In his address Mr. Pifer clearly recognizes the task ahead of colleges and universities to meet the demands for reform and change. It will be a difficult time, not necessarily because of the nature of the demands, but because the response will determine the role and educational objectives of these vital institutions. There is no doubt that our institutions of higher learning perform an important function; a function which has significant implications for our economic and social values.

Reform, then, must not be capricious or arbitrary for what ultimately comes to pass will have important and far reaching consequences for years to come.

Mr. President, I ask unanimous consent that Mr. Pifer's address be printed in the RECORD.

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

THE RESPONSIBILITY FOR REFORM IN HIGHER EDUCATION

It will be many years before we begin to understand fully the turbulence of our times. Whether this turbulence, and our uncertainty about its meaning, reflect primarily the trauma of withdrawal from an unpopular and mistaken war coinciding with the strains of a national effort to right three centuries of wrong against American minorities, or whether it signifies the onset perhaps of a fundamental cultural and social transformation, we simply cannot now know. And whether this great change, if it is to come, will ultimately prove beneficial or harmful to the nation, we also have little way of predicting.

Whatever the turbulence may indicate, the disequilibrium it is causing in our national life has brought on a healthy mood of skepticism about the operation of some of our major governmental, social, and economic institutions—institutions as varied as the federal regulatory agencies, the health system, and giant industrial corporations. Searching questions are being raised: Are these institutions serving the best interests of the people? Are they adequately accountable? Have they kept in step with the needs of the times?

Many people would agree that, among the major institutions of the society, none is riper for objective reappraisal than higher education. Indeed, it is now the subject of intensive study and debate—on individual campuses, in legislative and executive bodies, and by national commissions, including the Carnegie Commission on Higher Education. At no time in its 335-year history has American higher education come under such critical scrutiny.

Ironically, the new skepticism about higher education comes close on the heels of two decades of astonishing development which had brought it to a point where it was enrolling eight and a half million students while serving the needs of the nation in a wide variety of other ways. Only a short time ago this extraordinary enterprise seemed to many to be rapidly approaching an apogee of success unparalleled in this or any other country.

Certain simplistic charges against higher education have become familiar to the point of staleness. It is accused by radicals of complicity with the political, military, and industrial forces that have "conspired" to create an "oppressive society" and to involve the nation in an "unjust and immoral war." These critics also believe higher education serves primarily to further entrench the dominant classes in American life and to frustrate the kinds of revolutionary social change they regard as desirable.

Conservatives, on the other hand, argue that higher education, through an abdication of responsibility, has played a major part in helping to subvert the very values on which this country was built. It has, they believe, provided a home for the growth of a new youth culture founded on the use of drugs, permissive sexual relationships, and radical political notions and has turned out a product largely unfitted to contribute constructively to our national life.

Finally, there are large numbers of people, of all political persuasions, who believe that higher education has seriously neglected its teaching mission, the very purpose for which it principally exists.

These and other charges, leveled sometimes at something referred to loosely as "the system" or "the university," sometimes at the faculty, and usually at harassed administrators, have filled the air. Much of this criticism is superficial and based on limited evidence. The prescriptions for reform it generates are usually naive or simply punitive and generally have little practical value.

The desire for reform today, however, is by no means a monopoly of extremists, know-nothings, and political opportunists. There is a growing body of responsible, well-informed people, both on and off the campus, who believe the time has come for substantial changes in higher education. Among these people there is now a questioning of once sacrosanct practices, a new willingness to experiment, a new interest in the needs of students, and a new concern for those who have been denied access to higher education or have not been reached by the conventional system. Whether this new mood has been brought on solely by the successive shocks caused by student unrest, declining public confidence, and financial crisis, or whether it reflects some deeper dissatisfaction with what we have wrought in American higher education is not altogether clear. But whatever the cause, it is apparent that the disposition for reform is quite powerful.

People of this outlook are deeply troubled by the breakdown of the traditional consensus which for so long made the campus a readily manageable community. They are disturbed by such developments as the growing unionization of faculty and the tendency for the concept of "rights" to take precedence over other considerations in governance. They are concerned that the explosive growth of higher education in recent years and the proliferation of functions it performs seem to have destroyed any common sense of purpose within the enterprise. Finally, they are increasingly uneasy about the curriculum, wondering whether either the liberal arts as taught or the vocational training given is appropriate to the needs of today's students.

As those responsible for the destinies of particular institutions or groups of institutions face the question of reform, they quite naturally look first to what can be done on their own campuses. They take steps to enlarge student participation in decision making, to increase student contact with faculty through smaller instructional units, to allow periods of off-campus work and study, to improve management practices, to eliminate less important activities, and so on. In short, they do the kinds of things that lie within the power of governing boards, administrators, faculty, and students, working cooperatively, to do.

To call this kind of reform simply tinkering or minor repair work would be unfair, for it can affect an institution in quite fundamental ways. Nevertheless, it falls far short of what is required, because the root of the malaise presently afflicting higher education is to be found not so much in the practices and programs of individual institutions, important as it is that these be improved, as in the nature of the relationship which has developed between higher eduction and society. As this relationship has deepened and broadened over recent decades in response to vast changes in American life, the pressures on higher education have been raised to an intolerable level, and expectations of it have been created that cannot possibly be fully satisfied. It is, therefore, to the basic nature of the relationship between higher education and society that reform of a fundamental character must be directed. Such reform will require the participation not only of those groups or "estates" which make up the campus community, but of external agencies as well—government, industry, parents, and, indeed, the public at large.

THE FUNCTIONS OF HIGHER EDUCATION

The most illuminating approach to an understanding of the present nexus between higher education and American life is simply a description of the functions which our universities, four-year colleges, and community colleges, taken together, actually perform. Generally, these are expressed as "teaching, research, and service," but this traditional triad seems to obscure more than it reveals. A listing of the true range of functions yields a startling picture of an enterprise with a very broad range of purposes, all of which are somehow interrelated and yet many of which also seem to be mutually contradictory. Some of these purposes are well known to the public; others are only vaguely comprehended.

The many functions performed by higher education collectively are, of course, found in individual institutions in widely varying degree. No one would claim that the University of Minnesota, the Massachusetts Institute of Technology, Fresno State College, Amherst College, Tuskegee Institute, and Miami Dade Junior College are alike. Differentiation of function among institutions is an important aspect of our higher educational system. Nevertheless, a categorization of functions—of which it is possible to name at least thirteen—yields a composite picture of the total role of higher education in our society that cannot be grasped through analysis of the purposes served by any single institution.

Virtually every American college or junior college devotes some portion of its energy and resources to the *liberal education* of its students. There has always been argument about the precise definition of this concept. Most people would agree, however, that it involves gaining a basic knowledge of man

and his societies and the physical world, mastering the language and mathematical skills to reason and express thoughts clearly and logically, and acquiring such habits of mind as intellectual curiosity, the capacity to think critically, and the ability to weigh evidence objectively. There would be less agreement today that the inculcation of any articular set of values constitutes an integral part of liberal education. Few, however, would dispute that the concept does at least include some acquaintance with the principal value systems by which man throughout the ages has attempted to steer his path to some higher destiny.

Collectively, American universities, colleges, and two-year institutions prepare young people for an extraordinary range of professions, subprofessions, and occupations. Some of this training takes place in graduate professional schools, but much of it is at the undergraduate level or in two-year institutions. Although in most instances the credential awarded does not actually constitute a license to practice, the granting of such a license is dependent upon completion of the appropriate training. *De facto*, therefore, higher education not only conducts a vast system of *professional and occupational training* but also serves as a *sorting and selecting mechanism* to route the nation's youth into employment.

Although there are many inefficiencies in the way these two functions are carried out, the contribution higher education makes to our national life in performing them is indisputable. So varied and extensive are these training and sorting activities, the public tends to take them for granted and hence does not fully appreciate their enormous value.

In the United States we place primary reliance on higher educational institutions for the *discovery of new knowledge*. Research is also performed in industry, in independent institutes, and in government installations. Much, however, of the research that ultimately proves to be of greatest value, being unrelated at the time it is done to a recognizably useful product, would never be undertaken except in an academic environment. The significance of university-based research to the nation's economy, to its security, and to the quality of life of its people is incalculable. Not always appreciated, it is one of the great bargains Americans get when their tax dollars are used for the support of higher education.

Beyond the functions they perform in imparting the principal elements of liberal and vocational and professional education to large numbers of young people entering adulthood, and in the discovery of new knowledge, our colleges and universities have a special responsibility for the conservation, and transmission from generation to generation, of existing knowledge in its more complex or abstruse forms. In meeting this responsibility, they serve an indispensable purpose as *custodians of our cultural heritage*. It is to maintain the enormous accumulated store of humanistic and scientific knowledge which mankind now possesses that large sums of money are spent on faculty with highly specialized training and on great libraries, laboratories, and teaching museums. Without this investment we would constantly be engaged in a fruitless rediscovery of old knowledge. Cut off from our history, we would lack that sense of perspective about ourselves and our current social institutions so fundamental to enlightened judgment.

Many colleges and universities also sponsor a variety of cultural events which are available to the public as well as to the campus community. This activity is a logical extension of their role as custodians of our cultural heritage.

One of the less understood and appreciated but more important functions of higher education is its responsibility to provide a protected environment for detached, impartial *criticism of the larger society* based on knowledge derived from disinterested study and research. This is a role which other institutions, such as the press, also play, but the resources possessed by higher education to seek truth and express it extend far beyond the capabilities of other institutions. The need to safeguard this function is the basic reason why higher educational institutions, as institutions, must not take partisan positions or engage in partisan activities. So complex are the pressures on urban-centered universities today and so intensely felt the great moral issues of our times, it would be naive to suppose that this proscription can be absolute. But if institutions systematically or aggressively violate the position of neutrality that society accords them, they will not only forfeit one of their principal claims to support but will also jeopardize one of their chief values to society.

A peculiarly American function of our system of higher education is the role it plays in providing the *administrative base for public service programs* of an operational or research nature. These programs are found in fields such as health care, defense, foreign assistance, agriculture, and community service and are generally externally financed. Although they frequently make some contribution to the educational program on campus, their existence is also defended in many instances on the grounds that higher educational institutions have a responsibility for public service irrespective of any direct educational benefits involved. Despite the intrinsic value of many of these programs to external communities and to relationships with those communities, many institutions are coming to see that public service activities of this kind may be in partial conflict with the central functions of teaching and research.

Closely associated with the previous function is the service higher education performs in providing the logistical base for a *pool of specialized talent* which it makes quite freely available to external agencies such as government and industry. Outside consulting by faculty members, especially those serving in graduate professional schools, is an activity that has grown substantially and for some individuals provides a significant part of their income. From the point of view of the user agencies, having such a talent pool available is a distinct bargain, because the consulting fee paid to a faculty member is insignificant compared with the cost to his institution of maintaining his logistical base. It is certainly one of the hidden benefits to the nation for its support of higher education.

Nevertheless, faculty consulting has its severe critics. A great many students and some administrators feel that it causes a high rate of absenteeism among leading faculty members and conflicts with their primary responsibility for teaching and research.

Traditionally, higher education in the United States, as in many other countries, provided a means for the particularly ambitious and able person of middle or working class background to gain entry into a small elite at the top of the society, an elite which enjoyed considerable social prestige. As the proportion, however, of the eighteen to twenty-one year old age group enrolled in higher education steadily expanded—from 5 percent in 1910 to nearly 50 percent today—"going to college" gradually began to serve a different purpose. Today, for most Americans, it is virtually a prerequisite for entry into the middle class, or for remaining in it, if one is already there. Unquestionably this *class certification* function benefits minorities, the poor, and the lowly born in aiding them to enter the mainstream of American life. Nonetheless, it is intrinsically undemocratic and is probably what lies at the bottom of some of the current hostility to higher education.

Increasingly, a major function of higher education in this country is simply to serve as a form of occupation for an ever-growing proportion of youth during the transitional years from adolescence into adulthood—a kind of *way station* on the trail of life. Many young people seem to be at college for no better reason than want of an acceptable alternative. If there were anything but dead-end jobs available for them, or even jobs at all, or if there were interesting, productive forms of national service widely available, they might well prefer these alternatives. Lacking them, they drift into higher education.

This custodial function is clearly at odds with many of higher education's other functions. It consumes scarce resources, creates institutions of a size so massive they are virtually unmanageable, and creates conditions on campus which impede the progress of serious students. Nevertheless, the reluctant student with low motivation may gain considerable benefit from the experience, and perhaps society does too. A recent Carnegie Commission study, based on an analysis of data collected by social scientists over several decades, shows that people who have attended college are more tolerant in their attitudes toward other individuals and groups, more satisfied with their jobs, better paid and less subject to unemployment, more thoughtful and deliberate in their consumer expenditures, more likely to vote and to participate generally in community activities, and more informed about community, national, and world affairs. These are real benefits.

Although higher education has for many years, through its general extension programs and through part-time and evening study, offered *educational opportunities to adults*, this has certainly not been one of its most central functions. Nor have these activities enjoyed the prestige of undergraduate and graduate study by "regular" students. Attitudes are changing, however, both on and off the campus, and it now seems likely that the function of serving adults will assume much greater importance at a variety of institutions. It also seems likely that there will be a steadily growing demand by adults for the programs offered.

The provision of external degrees on a wide scale and lifelong entitlement to periods of study in a college or university are two new developments that may become quite general. Meeting the educational needs of adults is by no means inappropriate as a function of higher education, provided the activity is taken seriously and done well. Indeed, it may in the future be one of higher education's most important functions and one of the ways it brings greatest benefit to the nation.

In recent years most higher educational institutions have been obliged to offer work in two areas of liberal education, English and mathematics, that is frankly *remedial* and sometimes hardly even of secondary school level. A large part of this new function is associated with the extension of higher educational opportunity to able students with severely disadvantaged educational backgrounds. While this is a wholly laudable and defensible objective in today's circumstances, there can be little doubt the activity involved tends to be a drag on institutions and diminish their capacity to do genuine, college-level work.

A function of higher education which few of those who administer it care to recognize publicly is the role it has come to have as a major *purveyor of commercialized entertainment*, principally through its football and basketball teams. Not only are intercollegiate contests in these sports themselves of wide public interest, being watched by millions on television, but college teams to a large degree serve as the training ground for professional

teams. Not unsurprisingly, the enormous commercial importance of college sports leads to intense pressures toward their professionalization pressures that are almost irresistible. Sometimes the resulting situation is rationalized on the grounds that having good teams helps maintain campus morale, gain legislative appropriations, win the support of almuni, or even earn income for the support of other sports which do not have wide public appeal.

Substantial numbers of students are, however, beginning to question not only the ethics but also the appropriateness to higher education of "big time" college athletics. There seems to be a growing sensitivity about the exploitation of student athletes which may be involved and a new awareness that the values underlying this activity are probably inconsistent with the values of an academic institution. Organized athletics, of course, does have a legitimate place on the campus. It is the perversion of it that has become increasingly troublesome.

Among these thirteen functions, several go back to the beginnings of higher education in this country (and well before that elsewhere), several date from the latter half of the last century, and several are quite new, or are older functions that have acquired such changed meaning in recent years as to have become virtually new. These new and refurbished functions both reflect and have contributed to significant new developments in American life—development such as urbanization, population growth, affluence, scientific and technological advance, the communications revolution, ever-increasing specialization of knowledge, and the commitment to equal opportunity. Our colleges and universities have not stood apart from the transformation of the society brought on by these phenomena. They have helped cause it, and they have, in turn, been profoundly affected by it.

In the American context this interpenetration of campus and society seemed perfectly natural. Our instinct, time and again, was to turn to higher education whenever there was a new job to be done, and as a consequence both the functions of higher education and the varied activities these functions tended to spawn steadily multiplied, with little thought on anyone's part of the consequences, or of the alternatives.

In view of the formidable burden the nation has placed on its higher educational system, the astounding fact is how well it has succeeded, not how badly it has failed. It has performed its traditional functions well, on balance, and in some cases with high distinction. It has adjusted to the pressures of mass participation in a remarkable manner. It has provided a great range of services to the larger society, on the whole competently and at reasonable cost. The anomaly—the paradox—of the present situation is that a national institution which has risen magnificently to the challenges with which it has been confronted is now, by common agreement, in dire need of reform!

APPROACHES TO REFORM

There would seem to be three possible approaches to reform. The first is to retain the system of higher education essentially as it is but make such changes as are necessary on particular campuses to alleviate the worst strains resulting from the attempt to discharge partially incompatible functions. This involves transferring some activities to institutions where they can be more appropriately performed and curtailing or eliminating others. It is a process of moving toward greater differentiation of functions among different types of institutions and rationalization of activities within institutions. This approach has much to be said for it, and it is already well under way. But necessary as it is, it is likely to fall considerably short of what is required for the fundamental reform of higher education.

A second approach, which has its advocates in the academy, entails unilateral action by higher education to reduce its range of functions and activities sharply, thereby "purging" itself and reverting to the only "proper" pursuits—teaching and scholarly research. This approach makes for some good rhetoric, but it runs so contrary to the American concept of the role of higher education in society, especially public higher education, as to be quite unrealistic and impractical as a way of reforming the *system*, however attractive it may be to an occasional individual institution.

A third approach, and the one that seems now to be needed, assumes that all or nearly all of the present functions of higher education are likely to be continued but that substantial modifications should be made in the nature of the burden that performing these functions throws on higher education. This approach recognizes that the decisions made by governmental and other external agencies acting for the larger society, as to what to ask of the campus are as important to reform as anything done on campus. It suggests a need to find alternative ways of accomplishing some of the tasks higher education now performs. It implies major changes in the structure of the higher educational system and very possibly the invention of some alternative kinds of social institutions.

This approach will not entirely eliminate the present confusion of purposes in higher education, because the roles we assign to it in this country will continue to be numerous and varied. If energetically pursued, however, such an approach should at least reduce the pressures on higher education to a manageable level and allow it to concentrate more, and with easier conscience, on its most central functions.

REDUCING THE BURDEN

Many of the kinds of specific measures that might be taken to lighten the burden on higher education have already been widely discussed. A substantial structural change proposed by the Carnegie Commission on Higher Education would be the reduction by a year of the normal undergraduate course. Such a step would recognize the better preparation and greater maturity of many college entrants today. It could also provide, without further capital investment, some of the additional capacity that must be found in the coming decade for expanding enrollments. Finally, it would reduce the cost of a college education to society and to the individual and enable higher education to use its limited resources to benefit more people.

A second measure, which has not been widely discussed, would be to cull out of higher education an extensive array of vocational courses it now offers to prepare students for medium-level occupations and subprofessions. While such a step might have great merit, it would necessitate the development of a network of new institutions for "further education" with their programs closely tied in, perhaps on a "sandwich" basis, to a variety of manufacturing and service industries. It might also imply the further development of educational activities within industry.

This course would immediately raise a major question about the role of junior and community colleges. At the moment they are considered part of higher education. Should they be, or should we move in the direction of splitting postsecondary education into "further" and "higher" education and make the two-year college part of the former and almost entirely vocational in character? There would be many advantages to so doing but also some distinct disadvantages. One would be the danger, so well illustrated in Britain, of creating a set of institutions which enjoyed a level of prestige so much lower than that accorded academic institutions as to be socially deeply divisive. Another would be destruction of the very important concept of wide availability of a full range of postsecondary education, including the liberal arts, close to home and at minimal cost.

A third way of reducing the responsibilities now placed on higher education would be to transfer some of the research now done in universities to independent research institutes, or government installations, especially where the research of a type deemed less appropriate for an academic institution. In some cases new nonprofit institutes might have to be created for the purpose. This is the course currently being followed by one leading university, which is transferring to a new organization being set up for the purpose defense-related research and development programs running to many millions of dollars annually. While a step such as this can relieve an institution of a responsibility that has become awkward or burdensome to it, the costs in terms of overhead payments forfeited, in jeopardy to the quality of the research program, or in opportunities for graduate students foregone may be considerable.

In another area of functions, there is little question that some universities have made unwise decisions in agreeing to provide the administrative base for public service programs of a largely operational nature. Sometimes the administration of such a program is defensible as a research enterprise in itself, because it offers a practical milieu for student training, or simply because it is unavoidable as part of an institution's responsibility to the neighborhood in which it is situated. Nevertheless, academic institutions are not, on balance, well equipped to run large programs for the provision of services to the public, and unless there are powerful reasons for doing so, they could well leave the responsibility to others.

There is also reason to believe that the function performed by higher education of providing a talent pool for other institutions, principally government and industry, puts more of a burden on it than is generally recognized. Without by any means abolishing the function, universities could particularly at this time of faculty surplus, tighten up the administration of it so that it might better serve their interests.

Unquestionably the most important way that society could lighten the burden on higher education would be to find ways to relieve it of responsibility for the substantial numbers of young people who become students only because they feel they must avoid the stigma of *not* having attended college, or see no other way to spend the threshold years of adulthood that holds out any kind of promise to them.

This opens up the hard question of alternatives to higher education. What, indeed, can hundreds of thousands of eighteen to twenty-one year olds living in a highly urbanized, highly industrialized society do with their time? What kinds of maturing experiences can they have that will be constructive for the nation and for them, that will be sufficiently interesting to hold their attention, and will enable them to support themselves modestly, or at least contribute to their own support?

It is frequently suggested that the reluctant student would be better off out in the real world earning his living. But is this really possible? There are currently nearly fifteen million men and women in the eighteen to twenty-one age group, a number destined to rise to about seventeen million over the coming decade before beginning to decline gradually. Among the approximately nine million of this group in the labor force, which includes about two million also enrolled full- or part-time in higher education, the number unemployed is substantial. It is already well over a million and may well go higher. Furthermore, among those who are employed full-time, a great many hold jobs

which offer little opportunity for the development of skills of more than a rudimentary kind.

The prospect, then, if hundreds of thousands of young men and women who are now, rather unwillingly, enrolled in higher education were to seek full-time employment instead, is that they would simply swell the ranks of the unemployed, or of those employed in dead-end jobs, with all the negative social consequences that would entail.

There has also been a good deal of talk about national service programs for young people. Of these, the program most capable of absorbing additional young people in large numbers is military service. Such a course, however, whatever its merits or faults, would be widely unpopular, especially with the young people themselves. Nonmilitary service programs such as the Peace Corps and VISTA have been successful, but have obvious limitations in their capacity to absorb large numbers. Participation in them also requires a level of maturity which is by no means characteristic of all young people under twenty-one.

Moreover, there is the question of cost, a question which those who express concern over the tax burden of higher education would do well to remember. While the average annual real cost of having a student in college at the undergraduate level, including educational and general costs and board and lodging, is now more than $4000 (perhaps $6000 if foregone earnings are included), the cost of having the same person serve as a recruit in military service is $7500, as a Peace Corps volunteer nearly $10,000, and as a VISTA volunteer $7800. It should also be remembered that of the total annual expenditure on higher education only half comes from public tax sources, whereas in military and other national service programs the *entire* burden falls on the taxpayer.

A central task, then, if higher education is to be reformed through reduction of the pressures on it, is the invention of viable alternatives for some young people, alternatives that are at least as productive to society, as useful to the individual, and no more costly than going to college. This is no small assignment. It means the investment of huge sums of money to create new jobs with the potential for useful learning and personal satisfaction to those who hold them. It means the invention and financing of new low cost forms of national service. And perhaps it means some new ideas that no one has as yet even thought of.

If really viable alternatives can be invented and they prove attractive to some of our youth, not only will the burden on higher education be lightened but the role it plays in providing virtually the only means of social certification for middle class status in American life may also be diminished. Helpful in this regard also will be the many new nontraditional degree programs that are springing up today. To the person who decides to forego college immediately after high school they offer a second chance for higher education and the earning of a degree at a later date.

THE NEED FOR LEADERSHIP

In summary, it is apparent that the higher educational system in this country performs a very wide range of functions which collectively, have enormous economic and social value. It is also obvious, both in relation to this value and to economic and social costs of alternative ways for young people to occupy their time, that public expenditure on higher education is a national bargain and not the extravagance many people believe it to be. Finally, it is clear that reform, given the nature of the present national dependence on higher education, will have to involve the entire society and will entail the invention of ways to relieve higher education of some of its burdens and to lighten others. An understanding and acceptance of these three propositions would seem to be necessary to any concerted movement toward fundamental reform.

Although the national debate over the financing of higher education which has been taking place in the Congress, in state legislatures, and in the mind of the public is, understandably, focused on the question of institutional survival, one would like to see it enlarged to include the subject of reform—reform as delineated by the three propositions noted above. Reform and finance are inextricably linked. There can be no real reform which does not involve the major sources of finance, and, at bottom, it is unrealistic to debate the level of support for higher education without coming to grips with the question of what we expect of it.

Ultimately, there must and will be many parties to the debate on reform—the federal and state governments, private industry, private givers, the public and, not the least, the higher educational community itself. The debate, if it is to be constructive and result in measures that will be beneficial both to the campus and to the nation, will require informed, farsighted, and objective leadership. It is much in the interests of higher education not to let leadership of the reform movement pass by default to others but to assume this role itself. Higher education can do this, however, only by convincing the public that it can put the general interests of the nation ahead of its own special interests, and in the present climate this will not be easy. Developing a national capacity to lead reform is unquestionably one of the greatest challenges facing the higher educational community today.

MEDICAL CARE AS A RIGHT

Mr. SAXBE. Mr. President, my good friend, the distinguished Senator from Alabama (Mr. ALLEN) placed in the RECORD an article entitled "Medical Care as a Right: A Refutation," written by Robert M. Sade, M.D., and published in the New England Journal of Medicine of Dec. 2, 1971. The article provides a rather penetrating insight into the callous opposition by some members of the medical profession to the discussion and planning of national health care legislation.

Dr. Sade states, in part:

From man's primary right—the right to his own life—derive all others, including the rights to select and pursue his own values, and to dispose of these values, once gained, without coercion. The choice of the conditions under which a physician's services are rendered belongs to the physician as a consequence of his right to support his own life.

If medical care, which includes physician's services, is considered the right of the patient, that right should properly be protected by government law. Since the ultimate authority of all law is force of arms, the physician's professional judgment—that is, his mind—is controlled through threat of violence by the state. Force is the antithesis of mind, and man cannot survive qua man without the free use of his mind. Thus, since the concept of medical care as the right of the patient entails the use or threat of violence against physicians, that concept is anti-mind-therefore, anti-life, and, therefore, immoral.

In the New England Journal of Medicine for March 2, 1972, F. J. Ingelfinger, M.D., states:

The protests [to this article] were anticipated. But not forseen were the volume and the intensity of the positive response to the Sade doctrine.

If the number of those who agree with Sade is as large as the positive response to his article suggests, then he has identified a major but rarely emphasized ingredient in our much lamented health care crisis—namely, the huge ideologic gap that separates society and its leaders on one hand from large segments of the medical profession on the other. . . . Without some ideologic as well as practical rapproachement, progress toward a generally satisfactory health system will be infinitely slow and painful.

Mr. President, I have been an outspoken critic of our medical health care delivery system and have introduced S. 2827, the Medical Resources Development Act of 1971, and cosponsored S. 3, the Health Security Act, in an effort to remedy this crisis.

I agree with Doctor Ingelfinger that we in government must reach an accommodation with the medical profession in order to make any health care legislation work. However, I can see no accommodation with those who believe that there is no right to medical care.

My son, Dr. William Bart Saxbe, Jr., a 4th-year resident in surgery at Peter Bent Brigham, where Doctor Sade is also a resident, discussed this issue in a speech delivered to the Boston Surgical Society on March 13 of this year:

The second old point of contention is whether or not the patient has a "right" to medical care. Many of you may have read the recent *New England Journal* article by a fellow resident at my hospital which held that the patient couldn't have a right to medical care because the doctor had a higher right, which was not to have to treat anybody he didn't want to. He explained it in technical philosophical terms and referred to Locke and Hobbs, but it still seemed to me he had his priorities reversed. More importantly, I don't think the general public is going to go for his thesis.

I don't know much about philosophy, and I may not be able to tell a right when I see one, but I think I can tell a wrong. I think it is wrong when a person's medical care and, by extension, his health and his life, should depend on whether he is white, red, blue or green—where he lives—how much he can pay—or who he knows.

John Kennedy's little statement that "life is unfair" is really true. But Kennedy didn't say that in a fatalistic sense—he took it as a challenge, and he himself tried to make things more fair. In the areas of medicine and surgery, I think we can afford to make life fairer for our fellow-countrymen. I think the public is going to demand it, and I think they are entitled to it.

Mr. President, I find it amusing to hear laissez faire arguments on behalf of any profession or business that is the recipient of so much Federal aid. Having served for 2 years on the Health Subcommittee in this body, I am aware of the large amounts of money spent by our Government for the construction of medical facilities, for scholarships given to those deserving assistance in their medical education, and for medical research. The right to medical care is as essential to the right to live as a doctor's right to practice medicine is to the right to live. This has been recognized by the Government and the taxpayer in the public financing of our medical facilities.

Man's right to live is no more a defense to his callous refusal to provide medical care to others who also deserve that same right than it is a defense to his enslavement of others which we long ago forbade by the 13th amendment to the U.S. Constitution.

The State derives its authority not only from the actual or implied use of force but also the consensus of the governed based upon the morality of their government. Therefore, when Doctor Sade states:

In a just society with a moral government, it is clear that the only "right" to the bread belongs to the baker.

He is wrong if the baker is the single source of food for that society. The baker deserves just compensation for his bread but clearly does not have the right to starve society. I believe that this is what Victor Hugo was trying to tell us in Les Miserables when Jean Valjean was hounded his entire life for stealing a loaf because he was hungry.

I ask unanimous consent that the speech of William B. Saxbe, Jr., M.D., delivered to the Boston Surgical Society on March 13, 1972, and the letter to the editor in the March 2, 1972, issue of the New England Journal of Medicine be printed in the RECORD.

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

AMERICAN SURGERY AND THE PUBLIC INTEREST

(*Speech of William Bart Saxbe Jr., M.D.*)

Good evening! It's a pleasure to be here. I believe that the reason I have been asked to share the podium with such distinguished speakers is not because I am an expert or an authority on the topics they have discussed, but in the hope that I can represent some of the views of the next generation of surgeons. Clearly, I can't give a collective opinion or reflect all the views of my contemporaries, but I will try to be fair and frank. As you know, it's not just what you say, but how you say it (SLIDE—"John Knowles raps health care" headline)—and who you say it to.

Now, one of the nicest things about medicine in general and surgery in particular is that the practitioner is his own boss: I'm sure that this is one of the major attractions which brought many of us into the field. Beyond being pleasant, the advantages of this independence are the doctor can create most of the conditions of his own life, and that his lot rises or falls depending on his own performance. There are advantages for his patients as well, in that the doctor is free to innovate, to treat special problems in special ways; and that there are no specified or implied limits to his interest or initiative.

Unfortunately, the doctor's independence brings some disadvantages as well, and it is about the problems springing from those disadvantages that I plan to speak tonight. The most important disadvantages are a lack of accountability and a lack of effective coordination. There are two basic sets of problems involved in the present-day medical "crisis": those related to the performance of the individual practitioner, and those related to the performance of the profession as a whole. I'm not going to talk about the former: while there are real problems of individual performance, it is our problems of collective performance which are more serious. Most attacks on our system of medical care are not on care given by individual physicians but on the overall organization of the profession.

Let me tell you what I mean. There are areas which reasonably should be the responsibility of the profession which end up being the responsibility of no one in particular. Such areas are, for example, the availability of care—the fact that certain people in certain places at certain times can't get a doctor who treats what they have. "Distribution of medical manpower" is part of this. A second problem is the general cost of care—the fact that some people can't afford to pay—with or without insurance—for the kind of care they need. A third is the responsibility for assuring high standards of training and practice—with the obligation to act when those standards are not met. And so on. Clearly, there are problems which most of us will agree fall into the province of the profession—yet there is no one or no group in particular we can blame for not dealing with them. John Knowles and Ted Kennedy can find fault with a surgeon who takes out every tonsil he sees, but they can't really accuse him of personal malfeasance if a group of people on the other side of town can't get a doctor at night.

These larger problems—the logistics, cost, and overall quality of care—are not the problems the practitioner is used to dealing with. He is not used to thinking in these terms, and he frequently misinterprets outside criticism of the profession as criticism of his practice. That's not to say that he should be satisfied that he has done all he can just by taking care of those who come through his office door. It is no longer true that, if every member of the profession is doing a good job, that the profession is doing a good job. Let me say that again, because it's my principal theme: It's no longer true that, if every member of the profession is doing a good job, that the profession as a whole is doing a good job. In a way, it's analogous to the dilemma of the liberal in the racial crisis: it's not enough for us to treat every black we meet with scrupulous fairness, because the system is already stacked against him.

The reason the government is going to get involved in medicine is not the way doctors treat the patients they see, but the way they don't treat the patients they don't see.

Well, if you will grant me that we do have problems with the availability, quality and cost of medical care—and I don't plan to go any further into the details—you will, I hope, agree that somebody must confront them. The public is going to insist that they—the problems—be dealt with.

Who is going to do it? Well, really there are only two alternatives: the profession or the government. I have grave reservations about the ability of the profession to do this, because it is outside its past experience to handle problems of this sort, and the work will demand a coordination and organization the profession has never had. I'm not sure the American Medical Association will be able to do anything but mount a rearguard action; I'm afraid that most Americans believe that the AMA is more interested in staving off unwelcome solutions to the health crisis than in dealing with the crisis itself.

Maybe the Congress and the President—this one or the next—will agree on some sort of national health plan. My predecessors on the program are far more able to tell you about that than I am. Or, conceivably, the profession itself will come to grips with its deficiencies in such a way that outside help would be unnecessary. I would like to think that this is possible, but I'm not optimistic.

In either case, we have a lot of homework to do. The day of judgment is at hand, and we must be ready for it. Here, I'm happy to say that there is a dedicated group hard at work—the SOSSUS group: the Study on Surgical Services for the United States, formed by the American College of Surgeons and the American Surgical Association. This is an intensive and extensive self-examination, the goals of which are to assess the true state of American surgery and American surgeons, to illuminate areas where improvement is needed, to gauge the needs of the future, to make these findings known to health planners, and to take the part of the profession in the discussion and planning of national health programs. This is a tremendous responsibility, and the entire undertaking will stand or fall depending on the cooperation of thousands of individual surgeons across the country. Let me give you a few examples of some of the information already in hand. I am indebted to Dr. Francis D. Moore, who is the chairman of the SOSSUS Subcommittee on Manpower, for these slides.

Slide: Rates of selected operations in different areas of Kansas

Slide: Best estimates of present surgical manpower

Slide: The 50 commonest operations in the United States

Dr. Moore has written a brief summary of his subcommittee's work to date which appears in the latest issue of the Bulletin of the American College of Surgeons. One of his points in the article is that we need the help of epidemiologists and social scientists to complete and interpret these studies. We've been pretty wary of these people in the past, particularly when we hear the jargon about the "delivery of medical care"—as if we could have 2 quarts left at the doorstep every morning—or when the concerned physician and the sick patient are transmuted into the "provider" and the "consumer". Nevertheless, there is an established and growing body of wisdom which deals with the broader aspects of health care which surgeons will have to tap.

Now, I started off by telling you about the advantages of being your own boss, and I've probably convinced some of you that you're going to be assigned to a work brigade! I don't really think that's the case. I predict an evolution rather than a revolution in the orientation of the profession, the structuring of the individual surgeon's practice, and their relationship to the government. It will be an uniquely American system, with a different set of pluses and minuses than England, Sweden, Canada, Russia, or Madagascar. I think that what changes we will get will come gently and by stages. I think we can get into bad trouble only by denying that there *are* any problems or by failing to help in solving them.

Finally, I'd like to look at two old cliches which provoke an emotional reaction whenever they're brought up. The first is "fee for service".

"Fee for service" is always good for an argument because it means different things to different people. To the surgeon it means that he gets paid for what he does. To the patient and the general public, however, it may mean that you don't get the service unless you come up with the fee—no tickee, no washee. There are really two meanings, expressed here as—"The doctor earns according to his work", "The patient pays according to his illness."

Most of us would agree that the first part is just—that the surgeon's reward should be commensurate with his time and skill. However, I feel uncomfortable with the logical conclusion of the second—that a catastrophic illness for a patient should be a financial catastrophe as well. So the next time you hear "fee for service" bandied about, be sure to find out what the speaker has in mind.

The second old point of contention is whether or not the patient has a "right" to medical care. Many of you may have read the recent New England Journal article by a fellow resident at my hospital which held that the patient couldn't have a right to medical care because the doctor had a higher right, which was not to have to treat anybody he didn't want to. He explained it in technical philosophical terms and referred to Locke and Hobbs, but it still seemed to me he had his priorities reversed. More importantly, I don't think the general public is going to go for his thesis.

I don't know much about philosophy, and I may not be able to tell a right when I see one, but I think I can tell a wrong. I think it is wrong when a person's medical care and, by extension, his health and his life, should

depend on whether he is white, red, blue or green—where he lives—how much he can pay—or who he knows.

John Kennedy's little statement that "life is unfair" is really true. But Kennedy didn't say that in a fatalistic sense—he took it as a challenge, and he himself tried to make things more fair. In the areas of medicine and surgery, I think *we* can afford to make life fairer for our fellow-countrymen. I think the public is going to demand it, and I think they are entitled to it.

Thank you.

RIGHTS OF AUTHORS AND OF PATIENTS

WHAT'S a journal—almost any kind of journal—for? To offer its readers new information, new ideas, a different way of looking at things. Even a review article, if well done, permits new understanding of not so new facts. But to what avail is the article that merely restates that which the reader already knows or believes? The reader may feel gratified to see his own convictions endorsed, but the fare he has consumed is noncaloric; he has gorged himself on a psychologic pacifier. By the same token, the editor whose publication merely reflects the dominant ethos of the day, or the bias of a particular group, is providing intellectual sustenance of a low order. His journal becomes a me-tooer or a propaganda sheet.

What are the benefits, then, of publishing one more article pointing to areas of scandalous starvation, demanding more and ever more doctors, or asserting that everyone should have equal access to health care? Far better, and desperately needed now, are workable solutions to such well publicized needs. Alternatively, their premises may be challenged. Perhaps more doctors are not the best answer to the dissatisfactions with our present system of tending health. And if a bold soul wishes to question the concept that everyone has a right to health care, let us hear him. Even those of us who think him misguided may be prodded into sharpening the logic of our own convictions. Or he may be "hoist with his own petard." Above all, however, let us, editors and readers, not indulge in that insidious form of brain-washing which consists of denying space to him whose ideas conflict with ours.

Such are some of the reasons why the *Journal* published the article by Robert M. Sade, even though I personally believe the Ayn Rand brand of objectivism and libertarianism morally unacceptable, pragmatically unworkable and, with respect to medicine, totally contrary to what we doctors profess. Other protests are recorded in this week's correspondence section.

The protests were anticipated. But not foreseen were the volume and the intensity of the positive response to the Sade doctrine. Within three weeks he had received 200 commendatory letters and over 1000 reprint requests. At least seven groups (including a state medical journal, two county medical societies and the officers of a state medical society) have requested permission to reprint the article. What does this mean? Dr. Sade has obviously tapped a strong undercurrent of medical opinion that not only opposes but resents the doctrine of health care as a right.

A few years ago, when he was president of the AMA, Dr. Milford Rouse was roundly clobbered for suggesting that health care was a privilege rather than a right. Rouse had few defenders, either then or since. It seemed as if those who espoused similar views had become extinct, that the principle of inherent right to health care had become as accepted in the United States as that of free speech. But, as Sade has shown, the opposition is not dead. Its members have merely been inarticulate, waiting for someone to speak their mind.

If the number of those who agree with Sade is as large as the positive response to his article suggests, then he has identified a major but rarely emphasized ingredient in our much lamented health-care crisis—namely, the huge ideologic gap that separates society and its leaders on one hand from large segments of the medical profession on the other. Must not this gap be bridged before effective planning for, and implementation of health maintenance and illness care can be realized? Why argue about such technical matters as methods of payment, details of quality review, and duties of paramedical personnel before more agreement is achieved on basic issues? A progressive and aggressive medical leadership is needed to persuade the vast majority of the medical profession that any person within the United States has as much right to health care as he does to adequate transportation, postal service and fire protection. But the bridge must also extend from the other side of the gap. Society and its political leaders must recognize that medical care is much more complex than building roads, delivering mail or putting out fires. Thus, should the necessary medical leadership develop, government must accept its credentials and respond to its recommendations. Without some ideologic as well as practical rapproachement, progress toward a generally satisfactory health-care system will be infinitely slow and painful.

MEDICAL CARE AS A RIGHT

To the Editor: Please accept my thanks and congratulations for presenting the first instance (which I have seen) of "the other side" of the question of socialized medicine: "Medical Care as a Right" by Robert M. Sade. It is appropriate that the fight to free the practice of medicine should begin in the cradle of liberty in Massachusetts.

TOM ROE, M.D.

SAVANNAH, TENN.

To the Editor: The concept of medical care expressed by Robert M. Sade in his article, "Medical Care as a Right: A Refutation," is certainly correct, and frequent public expressions along this line at this time in history are badly needed. Also needed is the courage of the AMA to adopt this concept as official policy.

Last year, I wrote a resolution defining medical care as a human need rather than a right. This was eventually introduced to the House of Delegates of the AMA by the Kansas Delegation, but it was defeated in committee. This was accomplished largely through the efforts of the Speaker of the House, who seemed to be inspired by fear of an adverse reaction by the press if the measure passed.

To understand his actions, it is helpful to distinguish between a politician and a statesman. A politician is one who would be willing to do anything, including selling the medical profession into bondage, to be re-elected. A statesman is one who will preserve moral government, and in so doing acts in the best interests of the citizens. It may be noted that there are politicians in medical societies, as well as politicians in government. We deserve more statesmen in both.

We surely need not fear the attitude of the press for taking a stand on what we believe to be true. But we do need to fear acquiescence to misguided leaders in our profession and in government whose dominant interests seem to be preservation of an image or remaining in office.

This well written authentically documented article contains a message that should be widely disseminated. I see a ray of hope when this type of opinion can be found in the pages of such a distinguished publication as the New England Journal of Medicine.

RALPH HALE, M.D.,
American College of Allergists.

WICHITA, KANS.

To the Editor: It is ironic indeed that the article by Dr. Sade carried in the *Journal* of December 2, 1971, attempts to refute the notion that medical care is a right from an atheistic point of view. Far more telling arguments can be marshaled against medical care as a right from a Christian Theistic position. The irony is heightened when the author seeks justification for his philosophic position as being valid on the basis of the philosophy underlying the American Revolution and our resulting form of government. Nothing can be found in the ideas of the Founders that would support Dr. Sade's philosophy. Dr. Sade uses words and concepts such as "morality," "rights" and "government" in a way that is totally foreign to the thinking of the American colonists. They would not have agreed with his contention that "The moral foundation of the rights of man begins with the fact that he is a living creature: he has the right to his own life."

I am in complete agreement with the conclusion that government interference in the free-market delivery of medical care will destroy quality medical care for all, just as such interference has destroyed quality medical care in every country where it has been tried. Dr. Sade's philosophy will not turn us back from our present coercive society.

I believe that there is a great danger in coming to the right conclusions for the wrong reasons. Dr. Sade's reasoning, which brings him to detest compulsion from government, is built on shifting sand. Historically, this point has been proved since an insistence on man as supremely sovereign has led to totalitarianism, either directly or by way of anarchy. This historical lesson was clearly recognized by the 18th-century Americans but has been all but obliterated in the 20th century owing to the humanism of the age.

America is now operating a fascist economy and our head-long rush toward total fascism (government control of the market without owning the means of production, and in view of the situation at Penn Central and Lockheed, even that condition may not be true for very much longer) will not even be slowed by Dr. Sade's philosophy.

Only a return to the reasoned Christian Theism that founded this country will reestablish the conditions of personal and social life that will allow individual free enterprise to flourish in a truly pluralistic society as well as protecting the principles of Liberty and Property. Medicine's plight is part of the whole philosophical sickness from which America is dying. She will not recover under Dr. Sade's "nonsystem."

COLLIN E. COOPER, M.D.

LA CANADA, CALIF.

To the Editor: To anyone concerned with this society's headlong rush into the New Dark Age, the essay by Dr. Sade (December 2, 1971) is a thoughtful, concise statement of the most important issue of our time: the abrogation of individual rights. The society that fosters the notion that its members have a right to health care, or to the minds and services of any person or group, will have no compunctions about forcing individuals or groups to provide those services. The final inversion will be for government to assume control over professional education. Those with certain aptitudes, as established and judged by the state, will be given the "free choice" of entering designated "needy professions of low personnel density" or receiving no higher education at all. Specialist training and physician placement will be determined by a population-profession ratio determined by some bureaucratic "boffin" (scientific or technical expert) whose main concern is control of his peers rather than care of people. The wishes and aspirations of the individual will be dismissed as irrelevant—as indeed they are in a controlled society. As the quality of medical care declines,

those in authority will place the blame upon their victims, the practicing doctors. The laymen will be told that avarice and greed and lack of altruistic motivation on the part of doctors are responsible for the slow disintegration of medicine. Governments are not interested in quality, for excellence cannot be controlled. The goal is a standard level of mediocrity. Only doctors who regard themselves as chattels of society can find any comfort in these certainties. There will be little or no protest from the other professions, or from anyone else. People whose minds have been numbered by those modern comprachicos, the educators, who believe moral values are relative and negotiable, that the state has a valid claim to the lives of its citizens, that government by extortion is justified, that the "rights of society" are in some indefinable manner greater than the rights of an individual, will not balk at the total subjugation of the medical profession. A society that has meekly acquiesced in the military draft, compulsory arbitration, compulsory unionism and wage and price controls, and has accepted the notion that any demand, no matter how whimsical or irrational, that is put forward under the aegis of "social action" constitutes a right, is philosophically bankrupt. The psychologic cripples in medicine and government who seek control of our or any other profession can succeed only by achieving control over individuals. Once the right of a single man to his own life and the product of his own mind is abrogated, all men shortly find themselves pawns of the state to be manipulated or sacrificed as the exigencies of the moment demand. Every Utopia is built of the bricks of "controlled freedom" held together by the blood of free men, and is dedicated to the obscenity: "from each according to his ability, to each according to his need."

If anyone thinks the foregoing is simplistic alarmism, let him contemplate the recent activities of the governments of British Columbia and Quebec. In the former province, an attempt is being made to seize control of hospital accreditation committees with the express purpose of deciding who can go where and do what. Dr. Sade has described what happened in Quebec. He did not mention the "regionalization boards," committees of anyone at all preferably containing no practicing doctors, that purport to define the medical needs of a given area, and to direct the placement of suitable "personnel."

It is time for responsible and honest men in and out of medicine to wake up and appreciate the extent of the assault being directed at our professional and personal freedom.

A. L. AMACHER, M.D., F.R.C.S. (C),
Victoria Hospital.
LONDON, ONTARIO, CANADA

To the Editor: If Dr. Sade had not mentioned the repressive way in which Medical Care was introduced in Quebec in his paper entitled "Medical Care as a Right: A refutation," I probably would not have answered him.

The great majority of doctors in Quebec were in favor of Medical Care. However, the Quebec Federation of Medical Specialists fought the government on two issues. The first, and most important, issue was the right of the medical profession to retain full control of the Medical Art. The syndicate won. On the second issue, the specialists wanted full reimbursement of their fees, whether they opted in or opted out of the plan. The syndicate lost, and the medical specialists went on strike.

As for the bill 41, which was introduced to force the doctors back to work, one must put it back into its proper perspective. It was supported by all members of parliament at a time of turmoil during the October, 1970, crisis, five days after Labor Minister Laporte had been murdered by F.I.Q. agents and while Canada was under the war act. It is certain that bill 41 was tough, but many doctors left the province at a critical time. In any event, no doctors went to prison, even if some of them remained outside the province.

Today, Medical Care provides health services to all residents of the province. The patients are free to choose their own doctor, and all expenses are paid by the government. The scheme is working well, and I personally see no difference in practicing medicine in the Province today as compared to what it was before the introduction of Medical Care.

Sixty doctors have opted out of a total number of 8500. We are ahead of you in this field, and I am proud of it.

BERNARD LONGPRÉ, M.D.,
Centre Hospitalier universitaire.
SHERBROOKE, QUEBEC, CANADA.

To the Editor: I read with interest Dr. Sade's recent article entitled "Medical Care as a Right: A refutation." At a time when many aspects of our lives seem to be controlled by large, impersonal forces beyond our influence. I am certainly sympathetic and agree with Dr. Sade's deep concern for the freedom of the individual to direct his life as he chooses. However, we live in complex times. It is no longer possible—if it in fact ever was—to pursue one set of rights or interest to their logical conclusions while disregarding the consequences that this may have for those who are affected by our actions.

Today's physician, regardless of his form of practice, is not a rugged individualist who has "made it" on his own. On the contrary, society has provided a helping hand every step of the way. No medical student or physician during his period of postgraduate training completely supports his own educational process. Public funds are utilized in the support of his education either as direct subsidies or as part of grants from government, foundations and voluntary health agencies. Public monies also fund the research that improves the state of the physician's art, helps to build the hospital where he works and as often as not pays the fees of his patients.

Our society has come to consider health care more a matter of public interest and safety than a straightforward marketing of services. Clearly, the consumers of health care are no longer prepared to step aside and allow the physician to continue to act as an individual entrepreneur with no regard for the effects of his actions on the society around him. The consumers' perceived right to health and to life itself are no less strongly held than the perceived right of the physician to regulate his delivery of services.

This is not a win-or-lose situation. The consumer will not accept a "public-be damned attitude," and the physician will not and should not work on demand. As an intelligent community of professionals we must work with those who represent the public interest to develop new methods of attaining a relation between the physician and the consumer that maximizes the rights and interests of all concerned.

STANLEY S. BERGEN, Jr., M.D.,
College of Medicine and Dentistry of New Jersey.
NEWARK, N.J.

To the Editor: It is very difficult for me to believe that Dr. Sade is serious in presenting the arguments outlined in his recent article in the New England Journal of Medicine (December 2, 1971). The sophistry and the calloused disregard for human interaction based upon trust and compassion are almost unbelievably crass. And yet courtesy dictates that I must assume that both he and the Journal were serious in publishing the article.

I cannot imagine readily any more effective way of demeaning the skills of a physician than by equating them with a commodity that can be bartered; bought, sold, promoted or withheld from the "market" at the sole discretion of the "owner." What bargaining power does the Roxbury mother have when she brings her acutely ill child to the Children's Medical Center for care? I suggest that she has none except that dependent upon the compassion of the institution and the weight of public opinion. What bargaining power do the victims of a highway accident have, incapacitated far from home, in obtaining and evaluating the medical care that will restore them to health? I suggest that they are in no position whatsoever to bargain for anything—and certainly not to make well informed choices between alternative "products."

Perhaps Dr. Sade is satisfied to be a shopkeeper, trapped into bartering his services according to the laws of supply and demand. Although I realize the economic pressures under which physicians provide their services, personally, I refuse to submit to this indignity.

Although I respect Dr. Sade's sincerity, I regret his insensitivity to the real problems of the 1970's. I hope the vigor of response to his article demonstrates that I am not alone in this reaction.

ROBERT W. GAGE, M.D.,
University of Massachusetts.
AMHERST, Mass.

To the Editor: The article by Dr. Robert Sade, "Medical Care as a Right: A refutation" (N Engl J Med December 2, 1971), itself deserves to be refuted. Dr. Sade considers the concept of medical care as a right to be immoral because it requires governmental involvement in medical-care provision. In his view, medical care is properly a matter of self-determined action by free individuals: the seeking of services by patients; the providing of services by physicians. Governmental involvement is coercive and violates the free society of physicians and patients.

The trouble with this libertarian concept of medical-care provision is that it is almost totally unreal. Medical care may have been purely a matter of freely contracting individuals in the days of Locke and Burke, to whom Dr. Sade refers. It is certainly no longer that today. A variety of corporate bodies play major parts on the medical-care scene—hospital boards, hospital staffs, medical societies, specialty boards, accrediting bodies, insurance companies, labor unions, businesses, health and welfare funds, citizens' organizations. Can anyone pretend that medical care in the United States is not powerfully influenced by organizations like these? Do physicians and patients really function solely as autonomous individuals?

At the clinical level, transactions between physician and patient are still, and should remain, a matter of individual determination. However, the organizational and financial framework in which they take place are determined by a host of groups—groups that are mostly nongovernmental but impose major constraints on individuals nevertheless. This private structure of medical care has failed to serve satisfactorily an increasing number of citizens. That is why government involvement has grown. Dr. Sade may believe that government's only proper function is to provide people with physical security. For many of us, however, government is much more: it is the mechanism through which people may deal collectively with their problems in the most just and equitable manner.

DAVID SAVITZ, M.D.,
Reynolds Memorial Hospital.
WINSTON-SALEM, N.C.

To the Editor: In his recent article (N Engl J Med 285: 1288–1292, 1971) Dr. Sade has provided a thought-provoking analogy to

illuminate the complex social issues confronting American medicine: medical care is to the physician as bread is to the baker. Unfortunately, he has failed to make the comparison truly relevant by completing it as follows:

There is no food in the community other than bread.

Anyone not a state-licensed baker who dares bake or sell bread is liable to fine or imprisonment.

The bakers have conspired with the government to ensure that there is not enough bread for the populace.

The training of the great majority of bakers, as well as their bakeries, is heavily subsidized by the people through taxation (i.e., the forcible appropriation of the goods of the people by the State).

With the analogy more complete, consider the baker who refuses to give bread to a hungry citizen. Is it not the baker who is guilty of violence? Cannot the society that educates him, protects him from competition, and guarantees his prestige and affluence, require at least that he make his wares available to all comers?

FRANCIS P. LEBUFFE, M.D.,
New York Hospital.

NEW YORK, N.Y.

To the Editor: I was surprised and dismayed to read the special article "Medical Care as a Right: A Refutation" by Dr. Robert M. Sade in the *Journal*.

The article reveals clearly that Dr. Sade is fighting valiantly in a war that his side lost a long time ago. He says, "The only proper function of government: to provide for the defense of individuals against those who would take their lives or property by force." Should public schools, including most of our medical schools be closed? Should health departments, government-owned utilities and highways be abandoned? Or does he think all government functions except the police and armed forces should be turned over to private enterprise?

Whether an individual is a baker or a physician, the product or service provided by his labor is *not* his to do with as he pleases. Whether we like it or not there must be restrictions if we are to have a stable just society.

Dr. Sade states that medicine as a profession is moribund in Sweden and uses a quotation from Dr. Werkö's article to support this allegation. Dr. Werkö's article gave a very good description of the Swedish medical system and its problems particularly from the point of view of the hospital-based specialist, but it did not even suggest that the Swedish medical profession was moribund.

My own observation of the Swedish medical system showed that all Swedish citizens have access to good medical care without severe financial strain. I dislike much in their system, but they have accomplished this and we have not. The medical facilities and the medicine practiced in Sweden are excellent.

Dr. Sade says that we should not help design a national health system. If we want to practice good medicine in the future, we had better help design it. Swedish physicians have said that if they had participated fully in the development of their national medical-care system from the first, instead of resisting it, the physicians there would now have things more to their liking.

The South continued to fight the Civil War long after it lost, with resulting bitterness and slowed progress that has not yet been completely overcome. Will the medical profession continue to battle against a coordinated comprehensive health-care system now that the question is decided? The "reconstruction period" will be rough if we are victims instead of participants.

JAMES H. SANDERS, Jr., M.D.

BREVARD, N.C.

To the Editor: Dr. Sade's article in the December 2, 1971, issue, entitled "Medical Care as a Right: A refutation," is an embodiment of 16th-century thinking that truly antedates John Locke's and Edmund Burke's concept of natural rights, which he alludes to. The pursuit of his reasoning leads to several additional "corollary fallacies" that he seems to have overlooked. I would suggest the following:

The requirement of state or federal licensure for physicians guarantees that only properly trained and competent physicians will dispense medical care to the populace. The continually changing thoughts, opinions and clinical approaches of the medical profession indicates the elusive nature of "truth" in the field of medicine. Who is to say what is proper training and what is competence? Why shouldn't anyone who wishes to practice medicine be permitted to do so? Such laws only restrict the rights and throttle the minds of these people, and they do so by "violence or the threat of violence" by the State.

The practice of quackery, witchdoctory, acupuncture and chiropractic must be regulated and appropriately restricted by government agencies. Clearly this restricts the rights of these individuals to support themselves, and because such regulations can only be supported by "violence, or the threat of violence," "it is anti-life, and therefore immoral" (to quote from Dr. Sade).

From here to its reductio ad absurdum is all too obvious.

Of course medical care is a right! Its delivery is not a right, but a privilege. These are pragmatic truths in our "advanced" civilization that no amount of intellectual calisthenics can alter.

DAVID SHANDER, M.D.

DENVER, COL.

To the Editor: There are few heroes and supermen in the medical world: one only has to read Dr. Sade's special article entitled: "Medical Care as a Right" and on the same day, Jack Anderson's syndicated column on the "Neglect of the Aged" to fathom the chasm between theories and reality.

Dr. Sade's tight reasoning along the thoughts of Ayn Rand is appealing and, God permit, the business of medicine could be conducted along such moral paths. But, most of us being human and not elite superheroes, somehow, the day-to-day grind of living gives birth to fantastic inequities, simply by means of most of us not being faced with the problems every day.

"Problems such as high cost, few doctors, low quality of available care in economically depressed areas" are real, will continue to rise in spite of easy philosophical denials and eventually will engulf those who persist in seeing themselves as victims, though nobly refusing their sanction.

You must give your baker, Dr. Sade, the attributes of sanctity along with the overpowering rights to the products of his work, because if he ever uses his bread to tyrannize the very life of others, all your beautiful Ayn Randish argument becomes vicious.

The right to medical care follows directly from the right to live: when a society is embryonic, so are the organs to dispense services. But in America today, I see it as a direct responsibility of our society to organize systems to provide for it, and not by victims, but by willing providers. This is what medicine is all about.

JEAN-GUY FECTEAU, M.D.

SACRAMENTO, CALIF.

To the Editor: If I understand Dr. Sade (N Engl J. Med 285:1288, 1971), his logic goes something like this: a doctor's ability to earn a living is defined solely by his own "thought and effort": furthermore, doctors must be allowed to earn this living at all cost; therefore, doctors must be allowed to earn this living in any way they choose, without "outside" interference from well meaning but morally myopic patients and politicians.

Terrific! Now I can forget about all the dumb people who paid millions in taxes to help build my medical school and finance my education: now I can forget about poor city and farm folk whom I need not worry about serving any more, and now I can forget about peers and professors "immorally" persecuting me with obnoxious reviews and re-examinations. Best of all, I can forget about the nondollar "relationship" part of the doctor-patient relationship. After all, anyone bothering me on the telephone about warts or worries when I could be seeing another paying patient is wasting my time and his.

Yet, I sometimes do feel the prick of an obligation toward those who put me in the position of maximizing the gains of my "thought and effort." Sometimes, I do believe that not everyone is in the position of being able to put dollars down for my professional services, let alone being in a posh enough suburban location to get them. Sometimes, I do think that we doctors and future doctors are going to use our "thought and effort" to earn a living by manipulating our patients' market demand for medical services far more than we like to admit.[1] Sometimes, I do regard our medical profession's history of building a "rigid, self-perpetuating mystique about its knowledge, its jurisdiction, its practices, its prerogatives, and its mission"[2] as introducing an inequality into Dr. Sade's moral equations. Worst of all, sometimes I get the uncomfortable feeling that those I will serve should have some say so about how I serve them.

Silly thoughts, I know. Immoral, even. So let us put them aside and instead take up the heroic struggle of Quebec's courageous defenders of professional integrity. Let us unite and fight the repressive, evil patient-bureaucrat-politician complex until we have shed our last green drop.

JEFF BROWN, M.P.H.,
Stanford Medical School.

STANFORD, CALIF.

To the Editor: Dr. Sade's defense of a racist and discriminatory American health system is but a natural consequence of his support for the American economic system. He asserts that "The right to private property . . . is essential and indispensable to maintaining free men in a free society." The "freedoms" and "rights" to which he refers are bourgeois freedoms and rights—they are reserved principally for America's ruling class. That such a ruling class exists is easily demonstrable. From the Wall Street Journal we learn that the 200 largest corporations in America own 40 per cent of this country. From the FCC we learn that 90 per cent of all campaign funds come from approximately 1 per cent of the people. American imperialism abroad is but a logical extension of domestic imperialism; the ruling class in America owns 40 per cent of the world's natural resources.

Dr. Sade is under the illusion that the American worker has control over his or her life. In reality, the American worker (assuming that he or she is fortunate enough to be able to find a job) has little control over where, when or how he or she works and has no influence at all over what is produced, why it is produced, for whom it is produced, or what is done with the products of labor. Rather, it is the capitalist class and its

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[1] Brown J: Diagnosing and Rehabilitating the Medical Marketplace: Bennett essay on the business and politics of medical care in America. Berkeley, University of California Archives, May, 1971.

[2] Freidson E: Profession of Medicine: A study of the sociology of applied knowledge. New York, Dodd, Mead, and Company, 1970, p. 374.

various appendages that makes these crucial decisions owing to the fact that this class owns and controls the means of production and, consequently, the working class.

"Free enterprise," then, means the freedom for the ruling class freely to oppress and exploit the working class with relative impunity. Profit motive, and the demands of the market place predominate; human needs are important only so far as they may contribute to the maintenance of the status quo. It is upon the economic base of corporate capitalism that the various supra-structures are built, the medical-care system included. It should therefore come as no surprise that medical care in America is reserved primarily for those who have enough money to pay its exorbitant costs.

Thus, it is no coincidence that in the richest country in the world, over 60 million people live in poverty or deprivation (as defined by the United States Government). It is no coincidence that America ranks 15th in the world infant mortality rates, and that four times as many black women die at childbirth as white women.

Dr. Sade's defense of the present American medical system is a defense of racism, inequality and oppression. The end of such a system will come with the end of corporate capitalism, and only then will the full potential of man and womankind, as well as the full potential of medicine as a liberating and creative force, be realized.

MARK NELSON,
Case Western Reserve University Medical School.
CLEVELAND, OHIO.

To the Editor: I should like to take exception to one comment of Dr. R. M. Sade in his article. "Medical Care as a Right: A refutation," in the December 2, 1971, issue. Although he states many valid points, his comment concerning "apathetic internists," "apathetic surgeons" and "apathetic gynecologists" implies that all physicians currently employed by or in government institutions fall into that category.

This is untrue and one of his fallacies. These physicians are as dedicated as any of their colleagues. These doctors, or at least the majority of those that I have worked with or known, have no less self-esteem, integrity and competence than those in private practice or other endeavor not under government supervision. The one difference perhaps that he may accede to is the fact that these physicians chose to do the work they are doing rather than having been forced to do so.

F. W. HENDERSON, M.D.,
Veterans Administration Hospital.
LAKE CITY, FLA.

SADE ON THE RIGHT: A REFUTATION

To the Editor:

Bread is life. And the price is right—
for the Baker King. What's more, he bakes
the kind he likes—and bids the rest eat cake.

The hungry line outside his door
can wait. "No help needed, Mr. Kennedy,"
Too many bakers spoil . . .
the spoils.

It's late. And while the leavened coffers rise,
with a golden glow that fills his eyes,
he does not see those hungry guys
turn toward a different bakery.

J. DENNIS MULL, M.D.
COHASSET, MASS.

To the Editor: I must protest the inclusion in the New England Journal of Medicine of such a Special Article as "Medical Care as a Right: A refutation" by Dr. R. M. Sade. This type of article, shot through with conscienceless sophistry and self-righteous moralism, will ill serve medicine's cause in the current social debate over how the sick poor are to be served in the wealthiest nation on earth. The superficiality of offering a solution in semantics to one of the most pressing social problems of the day not only is irritating in its irrelevance but reflects all too clearly a deep-seated and mistaken attitude on the part of too many members of the profession that the problem can be made to "go away" if denied.

The article is undeserving of publication but if it were found where expected, in a Birchest tract, one could almost dismiss it with a shrug of disdain. To find it, however, as a Special Article in one of the world's most respected journals does nothing less than impugn the social conscience of the editor who chose to print it.

The *Journal's* sponsorship of such precious ratiocination is to be deplored.

JOHN T. ALEXANDER, M.D.
HUNTINGTON, N.Y.

JOHNS HOPKINS UNIVERSITY
SCHOOL OF HYGIENE AND PUBLIC HEALTH

To the Editor: On first reading Dr. Sade's lonely diatribe favoring resolution of man's congenital schizophrenia in favor of the individual's freedom from group restraint (N Engl J Med December 2, 1971), I was a bit aghast that so erudite a journal would give all that space to so naive an economic analysis, with its bare-bones example of the baker and *his* loaf of bread. And then a colleague suggested that perhaps the editor was handing the author the free end of a rope, the bitter end of which was a noose-knot.

If a man is a social animal, isn't the product of man a social product? But then Aristotle isn't always right. Sometimes he is even amoral.

ROBERT D. WRIGHT, M.D.
BALTIMORE, MD.

The above letters were referred to the author of the article in question, who offers the following reply:

To the Editor: Because of limited rebuttal space, I include a few general references that provide detailed refutation of those objections to my argument that are not discussed here.[1-3] I urge the objectors who have obviously not done so to read the references appended to my original article.

Wishful thinking and a conciliatory attitude cannot change the fact that all legislation is ultimately dependent upon the threat of physical violence. Initiation of the use of force in the name of the public good, social welfare, the state, the king and so forth is the great destroyer of civilized society. The consequence of the destruction of the free interaction of physicians with their patients and society as a whole will be the disintegration of quality in American medical care. Nonparticipation remains the most effective and moral method to avoid professional self-immolation.

An open marketplace is not "demeaning," and can be threatening only to one who has something to hide in the quality of his product or service. There is no higher mark of respect for one's fellow than to trade with him openly and freely, value for value. For physicians, the value received need not always be money: American physicians traditionally have often accepted as fair exchange for their services the intangible value of their patient's appreciative "Thank you." But when the relation between men is altered by the intrusion of a legislative gun, benevolence disappears, and fear becomes the currency of exchange. One wonders who really projects a "calloused disregard for human interaction based upon trust and compassion," the man who wishes to trade voluntarily with others to their mutual benefit with mutual respect, or the man who thinks it necessary and proper to deal with other men in terms of whose legislative power is greater.

It is certainly true that there are many "groups that are nongovernmental but impose major constraints on individuals nonetheless." However, one cannot fail to recognize the elementary difference between those groups and the government: the first cannot use force to settle a disagreement; the second can and does. Hospital boards, medical societies, insurance companies and the rest have a very important role in the care of patients and in the professional lives of physicians, but they cannot *force* either patients or physicians to do anything, except by voluntary contract.

By the same token, the patient does indeed have just as much a right to his own life as the physician has to his, but both rights end where the other's physical integrity begins. The "right" of a patient or his agent to force a physician to take care of his medical needs has the same moral basis as the "right" of Nazi physicians to force concentration-camp "patients" to lie down on their operating tables. Those "rights" are exactly reciprocal and equally nonexistent.

The argument that society has paid part of the educational costs of the physiciar and therefore has the right to force him to practice on the terms that it dictates reveals a totalitarian mentality. Nearly everyone in the country has had at least some of his education subsidized by the state; therefore, the argument logically concludes, the state has the right to direct the lives of all its citizens. A very neat package, indeed.

Finally, it cannot be emphasized enough that in the attempt to solve medical-care problems by legislative fiat, American political freedom is being sacrificed to a system that has failed to achieve its own goals wherever it has been tried.[4]

I thank Drs. Amacher, Roe and Hale for their comments.

BOSTON, MASS. ROBERT M. SADE, M.D.

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[1] Rand A: Capitalism: The unknown ideal. New York, New American Library, Inc, 1967

[2] Von Mises L: Socialism: An economic and sociological analysis. New Haven, Yale University Press, 1951

[3] Rand A: Atlas Shrugged. New York, Random House, 1957

[4] Lynch MJ, Raphael SS: Medicine and the State. Springfield, Illinois, Charles C. Thomas, 1963

RETIREMENT OF TWO LOYAL AND EFFICIENT OFFICIALS OF THE PANAMA CANAL

Mr. THURMOND. Mr. President, it has long been recognized that an official position with the Panama Canal enterprise is a sacred trust. Citizens of the United States serving in important capacities in relation to the maintenance and operation of the canal have had grave responsibilities requiring the performance of indispensable and efficient services. They have earned the everlasting gratitude of the people of our country as well of the users of the great isthmian waterway.

Recently, after long periods of service with the Panama Canal, two of its most efficient and capable officials retired: William Merrill Whitman, Secretary of the Panama Canal Company, after 32 years of service, the first 12 in the Canal Zone and the last 20 in Washington, D.C.; and Paul M. Runnestrand, Executive Secretary of the Canal Zone Government Panama Canal Company, since 1956, after a total service of 31 years, all of them on the isthmus.

Both of these positions required the incumbents to be outstanding persons of high order of ability with complete loyalty to the United States.

The stories of the retirements of Messrs. Whitman and Runnestrand were published in the March 10 and 17, 1972, issues of the Spillway, respectively. I would like to state, for the benefit of those who have not seen the original publications, that the second article concerning Mr. Runnestrand also carries a picture showing Under Secretary of the Army Kenneth E. BeLieu presenting Mr. Whitman with a resolution of the Board of Directors of the Panama Canal Company, expressing its appreciation for his long and outstanding services as Secretary of the Company.

Mr. President, because the high standards of performance by both Mr. Whitman and Mr. Runnestrand should serve as models for emulation by those who follow, I ask unanimous consent that the two articles be printed in the RECORD.

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

[Panama Canal Spillway, Mar. 10, 1972]

W. MERRILL WHITMAN CLOSES PC CAREER

W. Merrill Whitman who as Secretary of the Panama Canal Company and Assistant to the Governor has for the past 20 years been in charge of Canal affairs in the United States, retired recently after serving the Canal organization for 32 years.

A native of Nebraska, Whitman began his Canal career in 1940 as an associate attorney in the Office of the General Counsel. He received his law degree "cum laude" in 1935 from Nebraska's University College of Law and also attended Northwestern University Law School in Chicago and did graduate work in law at Georgetown University in Washington.

Prior to joining the Canal organization, Whitman was a legal editor for the West Publishing Co. in St. Paul, Minn.

After serving for 2 years as an attorney for the Canal, Whitman was made Assistant General Counsel, remaining in that position until 1948 when he became the Canal's attorney in Washington. In 1952, he became assistant Chief of the Washington Office and in July of that year was named the first Secretary of the Panama Canal organization.

Whitman was secretary of the Goethals Memorial Commission from 1948–54. He has written two books on legal subjects, one on Federal criminal procedure and the other on admiralty law.

As Secretary of the Panama Canal Company, Whitman has been responsible for recording proceedings of the Board of Directors meetings and has served as advisor to the board and the Governor-President on Panama Canal Company and Canal Zone Government matters.

He has acted as a clearing house for matters pending before the Board of Directors, appeared before Congressional committees, discussed Canal Zone affairs with the State Department, military officers and other U.S. Government officials. It has been his duty to analyze effects of proposed legislation on the Canal organization and to answer requests from Congressmen for data on the Canal and Canal Zone.

The Whitmans make their home in Kensington, Md.

PAUL M. RUNNESTRAND TO RETIRE TO FLORIDA

Paul M. Runnestrand, who has been connected with the Panama Canal since 1941 and has held one of its top positions as Executive Secretary since 1956, is retiring this month and will make his home in Florida.

As fourth in the line of men to hold the title of Executive Secretary which has been in existence since the Panama Canal opened to traffic, he has seen more changes in the Canal organization than any of this predecessors.

C. A. McIlvaine, the first Executive Secretary started work with the Canal during construction days and was followed by Frank Wang and Eugene Lombard, both well known on the Isthmus.

ASSISTANT TO PRESIDENT

In addition to his title of Executive Secretary, Runnestrand also performed the duties of Executive Assistant to the President of the Panama Canal Company. With the dual title and duties, Runnestrand has been one of the Governor's top advisers in both Company and Government affairs.

As Executive Secretary he has been liaison officer and responsible staff representative of the Office of the Governor-President on policy matters concerning the Government of Panama, diplomatic and consular missions and private commercial and non-commercial interests in the Republic of Panama and the Canal Zone.

Some of his duties include policies and regulations concerning contracts and control, Canal Zone purchase privileges, eligibility to engage in business in the Zone and the eligibility of persons to enter, reside or remain in the Zone. He also represents the Office of the Governor in policy matters and as Executive Secretary, is custodian of the Canal Zone Seal.

BORN IN MINNESOTA

A native of Minnesota, Runnestrand was graduated from the University of Minnesota with a bachelor of law degree in 1938. He was employed as law editor of the West Publishing Co. in St. Paul before coming to the Canal Zone in 1941 as an Associate Attorney in the General Counsel's Office.

He was promoted to Assistant General Counsel in 1948 and in 1953 was transferred to Washington, D.C., as Attorney and Assistant Secretary of the Panama Canal Company. He returned to the Canal Zone as Executive Secretary in 1956.

In addition to his two jobs with the Canal organization. Runnestrand has taken an active part in civic and social affairs in the Canal Zone. He has been executive director of the Canal Zone United Fund; member of the Canal Zone Executive Boards of Red Cross, Boy Scouts, Cancer Committee, Balboa YMCA; a member and past president of the Canal Zone Amateur Radio Association, and currently president of both the Canal Zone Bar Association, and the Federal Bar Association.

EXTENSIVE STUDIES

He attended the Foreign Service Institute Spanish Language Course in Mexico City; the Brookings Institution Second General Management Conference for Federal Executives in Williamsburg, Va.; and the Federal Executive Institute in Charlottesville, Va. He has been admitted to the Bar of the U.S. Supreme Court, the Minnesota Supreme Court, the U.S. District Court in the Canal Zone and the U.S. Court of Appeals, Fifth Circuit.

In 1967 he received the Outstanding Civilian Service Medal, one of the highest awards given by the U.S. Department of the Army to civilians for his outstanding service with the Canal organization and for dedicated support of the U.S. Government programs which the Secretary of the Army said had contributed significantly to United States-Panama relations and was in keeping with the highest traditions of the public service.

For his work in Scouting, Runnestrand received from the Canal Zone Council, Boy Scouts of America, La Orden del Espiritu de las Buenas Obras.

CITED BY JWB

On the eve of his departure from the Canal Zone, Runnestrand received a special testimonial plaque from the Board of Directors of the National Jewish Welfare Board for "his many years of leadership in the Isthmian Community and for his devoted service to the military and civilian residents of the Canal Zone."

The plaque was presented in a special ceremony by Rabbi Nathan Witkin, former Jewish Auxiliary Chaplain of the Southern Command and head of the Jewish Welfare Board.

In the second annual Public Service Award ceremony last month, Gov. David S. Parker presented a gold medallion and an Honorary Public Service Award to Runnestrand for his outstanding contribution to the Isthmian community as the first and only executive director of the Canal Zone United Fund and for his invaluable contributions to the many charitable and community projects in which he has been active. The award was accepted by Mrs. Runnestrand for her husband who was away on business.

Accompanied by his wife, Betty Runnestrand will leave the Isthmus at the end of March and plans to live in Winter Park, Fla., where they are building a new home. They will be joined at the end of this school year by their son, Eric, who is a student at the Canal Zone Junior College. Their daughter, Sarah lives with her husband in Princeton, N.J.

THE CHILDREN OF VIETNAM

Mr. KENNEDY. Mr. President, it is difficult at any time to stop and contemplate the suffering of children. But the time is long overdue for all of us to pause and open our eyes to the plight of the children of Vietnam and all of Indochina. Children are suffering and we are contributing to their condition.

Negotiations have broken down in Paris and a senseless war continues. And more children become orphans. More children are put in institutions. And more young people are forced into the streets. As we continue to fuel this war, we must finally reckon with this toll of the war—this human toll as seen in the faces of the children of Vietnam.

For years, this problem of children, the most pitiful of war victims, has gone unattended. As early as 1965, witnesses came before the Judiciary Subcommittee on Refugees—which I serve as chairman—and told us of the need for child welfare programs, for trained personnel, for a long range plan to meet the escalating needs of the children. In 1966 these needs were again cited. Token efforts were underway to meet these needs—but these efforts were not enough. In 1967, at the urging of the subcommittee, an aid-funded task force traveled to Vietnam to make program recommendations in the field of social welfare. The task force report outlined some immediate steps that could be taken, and some longer range plans as well. But this report, like so many others, was quickly filed and ignored. Since then the cries of the children and the appeals of humanitarians have all but fallen on deaf ears. In fact, in 1970, the social welfare component of our Embassy in Saigon was eliminated.

Mr. President, in early 1970 there were some 258,000 officially registered war orphans. Today that number stands at

more than 410,000. Several thousand are fathered by Americans. What is the fate of these children—and the tens of thousands unaccounted for—and the tens of thousands more who make up nearly 50 percent of Vietnam's refugees?

The availability of even a simple child welfare system could have made a difference for many of them. A trained social worker available at the maternity hospital might have dissuaded a mother from abandoning her child. Perhaps the existence of more day care centers would have enabled parents to keep their children. Perhaps a better medical system with more trained personnel could have prevented the spread of infectious diseases. Perhaps if there were a vocational training center, a teenage child would not end up in gangs, or a young girl in prostitution.

Fortunately, there have been those more mindful of these children's cries than our Government. Various voluntary agencies—including indigenous Vietnamese—have done commendable work. But they are forced to operate with dwindling resources and limited personnel. The response of the Government of South Vietnam has been slow, but as the years passed they too have recognized the needs and tried to answer the cries of the children.

In October of last year—nearly 6 months ago—the South Vietnamese Government drew up a new and expanded child welfare program and submitted a request for assistance to our Government. The program provides for the support of private sector welfare services, the strengthening of existing Government operated programs, and the creation of a high-level commission to design a long range program for child welfare.

In assisting the private sector through voluntary agencies, the plan covers day-care centers, foster care, nutrition and school feeding programs, assistance to low-income urban families, and the training of child welfare personnel. In strengthening existing Government programs, the plan would increase support to Government operated day-care centers and orphanges, would provide more adequate assistance to the growing number of war widows, and would establish a program to prevent the abandonment of newborn babies. The plan also proposes that the President of Vietnam appoint a high-level commission of public and private child welfare specialists to assist the Ministry of Social Welfare in designing a long-range child welfare program for Vietnam.

This plan is in keeping with the Government of South Vietnam's conviction that the best solution is to leave the children within a Vietnamese home whenever possible. The plan follows many of the suggestions outlined in AID's social welfare task force report of 1967.

Mr. President, the initial cost of the expanded child welfare program is modest—by the official exchange rate, little more than $4 million in counterpart funds for 1972. This is a sum spent four times over in a week for our military effort in Vietnam.

But what has been the response of our Government to this reasonable proposal by the South Vietnam Government? It can be summarized in one word—silence.

I am appalled by our Government's insensitivity. I am shocked by what appears to be a callous disregard for the children of Vietnam. It seems painfully ironic that for years our Nation has fed a military machine in that country—sending thousands of our finest young men and countless millions in bombs and arms. Yet when we have the opportunity now to help this country find a way to relieve the plight of the most pitiful war victims, we stand idle. In terms of our own objectives in Vietnam, the low priority we still give to social welfare is folly. In terms of America's complicity in the havoc of the war it is unconscionable.

Mr. President, we have a continuing responsibility to the people of Vietnam. We cannot wash our hands of their tragic plight simply because the last American soldiers are leaving their shores.

But the record is becoming clearer every day that the administration is establishing a national policy of walking away from our humanitarian responsibilities to the people of Vietnam. A short time ago a General Accounting Office report to the Subcommittee on Refugees outlined how the administration's policy was sabotaging programs dealing with civilian war casualties and health care. Today we learn the administration's policy is sabotaging needed programs for the children of Vietnam.

For the immediate future we should at least maintain if not increase, our contributions to those humanitarian programs we have helped to build and support for the benefit of the Vietnamese people. Our Government apparently has no qualms about pouring large sums of money into building up police forces in Vietnam. But what about an effective program of prosthetic devices for the lame? What about medical supplies for the sick and wounded? What about the care of orphans and the American fathered children and the millions of others in distress?

For the longer run, we should be thinking ahead to the time when the guns and bombs are finally stilled, and a full-fledged international humanitarian effort can begin throughout all of Indochina—an effort we should help get underway and generously support.

A good place to begin a policy of humanitarian concern is with the children. And so I strongly urge—what I know is shared by many Americans—that our Government favorably respond to Saigon's expanded program proposed for child welfare. The time for this decision is long overdue.

Mr. President, in 1965, at the beginning of our massive involvement in Vietnam, a child was born. Today that child is at least 7 years old. This child may be one of the more than 700,000 orphans in Vietnam. Must this child reach adulthood before our country sees the suffering, and answers the cries for help?

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of Saigon's proposal for an expanded child welfare program. The summary was provided by the Agency for International Development.

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

Summary of new and expanded child welfare programs, Oct. 26, 1971

[Cost estimates in millions of Vietnamese dollars]

MSW support of private sector child welfare services	150
Day Care	50
Improve existing day care centers, establish additional centers, new program of home day care services (MSW grants to foreign and Vietnamese VolAgs).	
Foster care for homeless children	12
Subsidies to foster families to care for homeless children, particularly in highland areas (initially through private agencies).	
Nutrition	50
MSW subsidies for school feeding programs and village level nutrition projects of VolAgs aimed primarily at children. Increase number of public elementary school children receiving nutrition supplements from 10,000 in 1971 to 300,000 in 1972. Train and assign additional 50 nutrition education workers to work with mothers and children primarily in Montagnard hamlets.	
Assistance to low-income urban families to enable their children to enter and remain in elementary school	25
MSW assistance to needy families in the amount of VN$200 per month to enable them to send their children to school (pilot experimental program).	
Training of child welfare personnel	15
Train 2 additional child welfare mobile teams of 3 workers each to train day care and orphanage personnel at Provincial level. Expand training of institutional child care workers.	
Strengthening existing MSW programs	380
Increase MSW support for child welfare institutions	65
Day care centers	22
MSW presently subsidizes day care centers at the rate of VN $200 per child/month. In order to enable low income mothers to utilize this service without having to pay additional fees, this subsidy is to be increased to VN $400 per child/month with half of the increase financed from additional AAC funds.	
Orphanages	43
MSW presently subsidizes orphanages at the rate of VN $600 per child/month. To replace the support orphanages have received in the past from US soldiers, this subsidy is to be increased to VN $1000 per child/month, with half of the increase to be financed from additional AAC funds.	
Assistance to War Widows and Children with Special Needs	315
Special assistance to civilian war widows	285
MSW proposes to register and issue to civilian war widows "widows cards" which would entitle them to benefits similar to those available to military war widows (i.e. reduced fees for medical care, free transportation, reduced rates at low cost restaurants, incentives to start home businesses etc.) To administer this program, MSW would need to employ 65 additional social workers and social welfare cadre.	
Prevention of abandonment of newborn babies	30

MSW proposes to place specially trained social workers in maternity hospitals to administer a program of short-term emergency assistance to mothers who, because of economic need, might abandon their new-born babies or place them in orphanages.

Child Welfare Commission 15

MSW intends to ask the President of Vietnam to appoint a high-level Commission composed of leaders of public and private child welfare agencies in Vietnam and the U.S. to assist the Ministry in designing a long-range child welfare program for Vietnam. The amount of VN $15 million would be required for staff salaries, consultants, travel expenses etc.

Grand total 547

Source: Saigon 16847.

THOUGHTS OF A BROTHER OF A PRISONER OF NORTH VIETNAM

Mr. MILLER. Mr. President, a member of the staff of Westmar College, LeMars, Iowa, has a brother who became a prisoner of war during the Tet offensive of 1968 while serving in the Hue area of South Vietnam.

He has written some thoughts which incorporate extracts of letters from his brother, written prior to the Tet offensive, and the philosophy of one who wonders whether his only brother is still alive.

I ask unanimous consent that this impressive essay be printed in the RECORD.

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

ESSAY

My name is George Gostas. I am Cataloging Librarian at Westmar College Library in Le Mars, Iowa, 51031. My job is to prepare cards for the card catalog. Attached to the cabinets are small brass plates which read, "In loving memory of 1st Lt. Corbin C. Tindall '64, 1942–1969." The card cases were a gift from the family of a young man killed in Vietnam. The plates remind me that a terrible war is going on; part of the world is on fire. And brave, good, young American men are dying in that war. The plates remind me also that my brother is a Prisoner of War.

My brother was born in 1938. He has a wife and 3 children, the youngest of whom he has never seen as he was born while Ted was in Vietnam. He had been 11 months at the old cultural city of Hue when the famous Tet Offensive of February 1968 broke out. Hue was hardest hit of any of the cities of Vietnam. It took 22 days and many lives to recapture it from the Viet Cong. There were hundreds of thousands of refugees, and even 200 civilians marked for death by the Viet Cong were buried alive. My brother was first listed missing in action Feb. 3. 3 weeks later 2 prisoners escaped from one of the camps, memorizing the names of others with them. They reported Ted alive but wounded. He was doing well but they did not know how long his health would hold up under the camp conditions. All this was over 3 years ago. My brother has never written. Letters sent to him in care of the Viet Cong in France or Algeria simply vanish from sight. We do not know if any have been delivered. A Christmas package came back from Cambodia marked "refused."

My brother lives in my heart. I have letters and memories of him. At the time of his capture, the people in this area and I were helping him collect soap for orphans at Hue. The soap was delivered in Hue by his friends. He was cultured, articulate, with an I.Q. rated as genius. Faculty at the University of Wyoming, which he attended, spoke of hanging one of his efforts in the offices of the English Department. In October of 1967 he wrote to me: "There is a novel here in Hue and I will be its author. It will be my first work. . . . If God allows, I will return home and do what must be done by saying what must be said. This war is confusing not only to people where you are but to many people here as well. But the greatest theme here is tolerance and patience and love. To feel prejudice and watch it melt from solid steel in compassion, that is the theme of life and the substance of the dreams of God. To hate and feel deeply and learn understanding and trust. . . ." He wrote his book but, presumably, the Viet Cong have it.

Some of the things written by Ted were very terrible and detailed war in all its hellish brutality. In his words, "Death has stepped closer to Hue. The VC killed marines (near) here and one of the boys had six days before rotation. Oh, well, it is all in a day's dollar . . . Write about man's inhumanity to man. I can't write it because I am too bitter . . . Bleed not for me. Bleed for life and all its meaningless meanings . . . Let there be light, intense and burning . . . The mortars come and blast away flesh . . . eat life or it will eat you . . . dead bodies." And again he wrote: ". . . six months already. I think I went completely insane the first 3 months and now my sanity is gradually returning . . . I feel so sorry for the poor guys who are just getting off the plane in Saigon. If I had a year to do I would blow my brains out. One boss of another agency here did just that in Saigon circa 2 months ago. Just stuck a .38 in his mouth, pulled the trigger, and blew his brains all over the bedroom. What a silly thing is suicide. There is so much in this world that is beautiful and good and so little that is really bad. . . ."

But my brother also showed humanity and goodness at its best. He wrote: "Do the best you can on the soap . . . George, even if the entire U.S. sent soap and toys and hope over here, there would be room for more. So, don't worry about the project being small. Who cares how small it is? Can it be smaller than the face of an orphan with blood on his cheek, rubbing the scratch with dirty fingers? Can it be smaller than the outstretched hands of a little girl saying, "Give me." Can it be smaller than a little plastic car from a box of tea and rice candy that received a smile and a cry of joy larger than the whole world? If it can be smaller than that, it is still worthwhile. The job to be done in Vietnam is bigger than the biggest project and, therefore, must be accomplished through many smaller ones."

Ted wrote: "The war is not far away from you in Vietnam. You either hear about it, see what it has done, read up on it, or, if you are not lucky—live it! . . . Your questions, your petitions, your doubt, and your problems somehow lose all meaning over here. All one remembers when one is in Vietnam is how the grass looks back home, his wife, how the children sound when they laugh, and how strange it is that one never really, really, appreciates anything until it is denied. And that is the secret of freedom. Have it and you are unaware that it is there; lose it and you are lost—confused—and finished . . ."

Every American has his own view on the war. My brother had his; you have yours; I have mine. In my opinion, the best way to stop war is to stop the causes of war. I feel my brother was trying to help buy us time to work on the problems that cause war, such as poverty, ignorance, hunger, economic and political instability. We need global thinking on an international basis. We should work to make the United Nations more effective. In the meantime, the Four Horsemen graze their horses at our own back yard and wait. My brother's viewpoint was more of a national one. He loved America and was willing to die on her behalf. He wrote: "Don't be afraid to wave our flag either. It is a beautiful one to wave. And all those stars are bright ones, full of hope and love of man." Ted was my only brother and my closest and dearest friend. I read much on Vietnam. It makes me feel closer to him in his hour of need.

I recommend to you the Reader's Digest for April 1971 for its article "Inside the Prisons of Hanoi" and that of May, 1971 for its article "Our Missing Men . . ." which contains a picture of my brother, Major Theodore William Gostas. Read also *Village in Vietnam* by Gerald Cannon Hickey (Yale University Press, 1964) and *Vietnam; the Unheard Voices* by Don Luce (Cornell University Press, 1969). But read first on your list the fine book by Philippa Schuyler called *Good Men Die* (Twin Circle Publishing Co., 86 Riverside Drive in New York City, 1969). A genius, she went to Vietnam to play piano for troops (she played in 78 countries) and to write this book. She spoke English, Italian, French, Portuguese, Arabic, Spanish and several African dialects. She was the only child of a gifted Negro and a brilliant white woman. She died in Vietnam at the age of 35, while trying to help the orphans at Hue after finishing her book. Her book is of the greatest interest to me because it deals at length with Hue at the time my brother was working there and with the Army service with which he was involved.

We must see my brother's problem in good perspective. Over the Labor Day weekend in 1966, 29 servicemen were killed in Vietnam while 614 Americans were killed on our highways. We have lost on our own streets and highways nearly three times as many Americans as we have lost on all our wars put together. Some scientists think the best population for the planet earth may be as low as 1 billion people. We now have over 3 billion and are rushing forward at the rate of 180,000 new people a day, a new Chicago every month, a new U.S. every 3 years. The problems that demand our attention are many and critical. The time, energy and attention that can be given to the less than 2,000 men who are Prisoners of War is strictly limited. What can be done for them? There is a picture by Peter Breughel showing the fall of Icarus into the sea before an indifferent audience. The picture bears the motto, "Not a plow is stilled because a man dies." Won't you still your plow to do this: Once each 6 months write a letter to the Viet Cong asking for humane treatment for our men.

At best, I hope for a full prisoner exchange. At least, I hope to learn if my brother is dead or alive. For now, I go about my business, see the brass plates on our catalog cases, think of my brother. Callimachus the Greek wrote of old: "They told me, Heraclitus, they told me you were dead. They brought me bitter news to hear and bitter tears to shed. I wept as I remembered how often you and I had tired the sun with talking and sent him down the sky. And now that thou art lying, my dear old Carian guest. A handful of gray ashes, long, long ago at rest, Still are thy pleasant voices, thy nightingales, awake; For Death, he taketh all away, but them he cannot take." What more is there to be said? Asia keeps her exotic mysteries locked up within her. What has concluded that we may conclude anything about it? But in helping others we are really helping ourselves and all men. As Donne said: "No man is an island, intire of itself; never send to know for whom the bell tolls; it tolls for thee."

SOVIET MISSILE PERIL

Mr. BUCKLEY. Mr. President, a dispatch in the New York Times of March 22, 1972, concerning the testimony of Dr. John S. Foster, Jr., Director of Defense Research and Engineering before

the Senate Armed Services Committee, deserves comment because of the misleading headline on the dispatch.

The story headline read "Soviet Missile Peril Now Found Unlikely by the U.S. Until the 1980's." This headline grossly distorts the burden of Dr. Foster's remarks, and I, therefore, believe that the record must be set straight.

I quote, in full, the portion of Dr. Foster's testmony related to the headline in point:

Analysis of the latest projections concerning Soviet missile growth rates and accuracy improvements indicate considerable variation in the time period in which our Minuteman forces would be seriously threatened. In cases where small growth is assumed, Minuteman forces do not appear to be threatened until the early 1980s or beyond. For middle range assumptions, Minuteman could have less survivors in 1980 or before. If the most severe of the postulated SS–9 and SS–11 type missile forces were directed at Minuteman, the Minuteman force (assuming that the silos are undefended, but are upgraded in hardness) could be drawn down as early as the mid–1970's. Prudence requires that we take the more pessimistic projections seriously.

There are considerable grounds for believing that it would not be prudent to assume, contrary to what is suggested by the New York Times headline, that the Soviets will hereafter follow a policy of slow growth for their strategic forces, and that they will not achieve a counterforce capability well in advance of the 1980's.

First, the Soviets have not in fact been following a policy of slow growth for their strategic forces. The authoritative British defense review, the International Institute for Strategic Studies' "Military Balance, 1971–72," shows that, since the Soviets agreed to meet with the United States to discuss limitations on strategic arms in early 1968, the Soviet Union has doubled their ICBM force and more than tripled their submarine-launched ballistic missile force.

Second, it would be imprudent to assume that the Soviet Union is necessarily more retarded in scientific matters than we are in view of the fact that all available evidence suggests a more vigorous military research and development program than our own. We are already building guidance and control systems for our Minuteman and Poseidon that could, if applied to the much larger Soviet SS–9 and SS–11 warheads, pose the kind of threat to our Minuteman forces by the mid-1970s which is suggested in Dr. Foster's remarks.

More recent evidence brought to light since Dr. Foster testified tends to underscore Dr. Foster's warning about taking Soviet efforts to improve their forces seriously. According to a New York Times dispatch of March 28, 1972, the Soviet Union will "imminently" begin a test program for a new series of ICBM for deployment in some 90 to 100 silos already available for the purpose.

Inasmuch as the Soviet strategic weapons buildup has already gone far beyond the requirements for simple deterrence, we must assume that the Soviets would attempt to use these forces to support their diplomacy, which means that we must assume that they are moving to achieve a position of superiority which could dramatically curtail an American President's options in future diplomatic confrontations with the Soviet Union, whether they take place in the Middle East, or in Europe, or even in the Caribbean.

I ask unanimous consent that Dr. Foster's complete testimony and related articles from the New York Times be printed in the RECORD.

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

STATEMENT BY THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING, DR. JOHN S. FOSTER, JR., ON THE SAFEGUARD SITE DEFENSE OF MINUTEMAN

BACKGROUND

The Safeguard system deployment is a phased program which emphasizes the defense of our land-based deterrent, and maintains the option to deploy a light area defense. It has no sites planned for deployment in or near large cities except for Washington, D.C. On March 14, 1969, President Nixon established the objectives for Safeguard:

Protection of our land-based retaliatory forces against direct attack by the Soviet Union.

Defense of the American people against the kind of nuclear attack which the Peoples Republic of China is likely to be able to mount within the decade.

Protection against the possibility of accidental attacks from any source.

He further elaborated:

"We will provide for local defense of selected Minuteman missile sites and an area defense designed to protect our bomber bases and our command and control authorities."

"By approving this system, it is possible to reduce U.S. fatalities to a minimum level in the event of a Chinese nuclear attack in the 1970's or in an accidental attack from any source."

The President also stated on March 14, 1969, "This program will be reviewed annually from the point of view of (a) technical developments, (b) the threat, and (c) the diplomatic context including any talks on arms limitations." He further stated that "each phase will be reviewed to insure that we are doing as much as necessary, but no more than required by the threat existing at that time."

In the FY 70 budget, following the Safeguard decision, the President proposed to move forward with the deployment of an initial phase consisting of sites at two Minuteman Wings, one near Grand Forks Air Force Base, North Dakota, and one near Malmstrom Air Force Base, Montana. Congress approved this proposal.

The Administration's FY 71 proposal, following the second annual review, was to go forward with both the Grand Forks and Malmstrom sites; commence deployment at one additional site in the Minuteman field near Whiteman Air Force Base, Missouri; provide for additional Sprints at the Grand Forks and Malmstrom complexes; and undertake advanced preparation for deployment at five other sites. Congress approved this proposal, except that authorization for advanced preparation was limited to a single site near Warren Air Force Base, Wyoming.

In the FY 72 budget request, following the third annual Safeguard review, the President's proposal recommended continued deployment at Grand Forks and Malmstrom, initiation of construction at Whiteman and authorization for deployment of a fourth site at either Warren or in the Washington, D.C. area. Congressional action on the FY 72 request approved the continued deployment at Grand Forks and Malmstrom, but withdrew authorization for construction at the Whiteman site, thereby limiting deployment strom sites; activity at the Whiteman and Warren sites was limited to advanced preparation only; and consideration of pre-deployment activities in the Washington, D.C. area in FY 72 was eliminated. This action was based in part on the fact that delay in the start of the Malmstrom site construction influenced the decision to delay construction at the Whiteman site.

This year we are presenting the fourth annual review of the Safeguard program in keeping with the President's March 14, 1969, statement. A complete and comprehensive review has been conducted in accordance with his commitment. Because of its close relationship, the Site Defense of Minuteman program (formerly called Hardsite Defense) will also be treated as an integral part of the Safeguard discussion.

Summary of review

Principal findings of the review relative to the FY 73 budget submission are summarized below:

The technical progress on Safeguard over the past year has been outstanding and there are no technical problems which would affect a decision to proceed with the Safeguard deployment in FY 73.

Construction at the Grand Forks Safeguard site is on schedule and about 80% complete. Construction at Malmstrom was delayed by 11 months by labor problems with an attendant delay in site readiness (early 1976): Construction at Malmstrom has been restarted.

All of Safeguard ground equipment for Grand Forks and Malmstrom is under contract and procurement of equipment has been initiated for the Whiteman site.

The Soviet threat has continued to evolve both numerically and technologically over the past year. The Soviets have initiated construction of new silo designs which imply that new or modified missiles may be deployed. The production of the Y-class ballistic missile launching submarine continues at a high rate and a new, longer range SLBM is rapidly approaching an end to its development cycle. Its platform, however, has not yet been identified.

The People's Republic of China (PRC) has continued to develop its nuclear capabilities. There is evidence that the PRC initiated flight testing of a possible ICBM in 1971.

SALT negotiations continue. We cannot at this time be certain, however, that a SALT agreement will be reached or, if so, what the exact provisions of the agreement will be. The measured, phased Safeguard program continues to support both the flexibility and the strength of the President's SALT negotiating position.

Thus, since (a) successful technical progress has been made on Safeguard, (b) the Soviet threat has continued to grow, and (c) we have not yet reached a SALT agreement, we are requesting authority in FY 73 to proceed with Safeguard deployment at four Minuteman sites. We are also requesting authority to initiate advanced preparation for Safeguard deployment at the NCA (Washington, D.C.). Our long term plan, in the absence of a SALT agreement, continues the option for full Safeguard deployment at 12 sites.

Finally, we believe that it is essential to maintain a vigorous ABM R&D program. We are, therefore: (a) continuing the Site Defense of Minuteman (formerly Hardsite Defense) prototype demonstration program to develop additional defense capabilities of Minuteman should they be required later, and (b) continuing the area defense R&D program leading to the capability should it later be required to expand defense of our strategic retaliatory forces, to include both our ground-based alert bombers and com-

mand and control centers, improved NCA defense and light, nationwide area defense. We feel that continuing pursuit of all of the above programs is important to our national security.

Threat

The Secretary of Defense in his Annual Defense Department Report has, in some detail, spelled out the general nature of the present strategic threat. However, in terms of ABM development and deployment decisions, it is necessary to estimate the threat development in the future. For this reason, the threat analysis of interest to ABM issues is necessarily somewhat speculative. Furthermore, judgmental differences can significantly alter the conclusions as to the rate at which our ABM developments or deployments must be pursued.

Long term threat projections must consider threat quality as well as quantity. Indeed, over the long spans of time for development and deployment of a system, enemy programs to develop a responsive threat to our ABM capabilities such as penetration aids may be started and deployed in parallel with our ABM development and deployment cycle. What is done in this situation is to assume, for instance, that the Soviets with their major resources might be able to develop the type of response to our ABM capabilities that we, ourselves, have been able to develop or demonstrate within the U.S. advanced reentry technology programs.

Proceeding in this way has, historically, allowed the U.S. ABM programs to be conducted in a manner so that they are in large measure insensitive to potential major changes in the Soviet threat quality. This is also a clear example of a major benefit derived from having a vigorous R&D program. This technique of using the advanced U.S. technology as the basis for projections of the best the Soviets could do is vital given the long lead times involved. Without this lead in penetration technology, the entire problem of ABM might well be unmanageable. At any point in time, however, we estimate the threat based on our best intelligence information and time phase our programs accordingly.

Given the above approaches to cope with potential improvements in Soviet penetration technology, the prime problem is how to be responsive be increased in the Soviet threat quantity. As mentioned earlier, this is primarily an issue of estimating the rate of Soviet force changes versus the required offsetting U.S. deployment rates. As discussed elsewhere, this is a very significant part of the annual review process. The DoD approach is and must be based on how early or how rapid the Soviet threat could change. Many if not a majority of the dissenting opinions on the need to defend our retaliatory forces are based on judgments that the Soviets will make changes more slowly, if at all.

This critical viewpoint difference surrounds the decisions that must be made on how rapid Safeguard should be expanded to provide Minuteman protection. The following threat sections treat in increased detail the threat changes that have occurred over the last year that form a major part of the annual review process:

U.S.S.R. ICBM'S

Deployment of the SS–11 in standard silos has probably ceased. Although SS–9 deployment has been irregular, there are indications that further SS–9 silo construction has stopped. However, during the course of the last year, we detected almost 100 new silos that differ from previously deployed Soviet ICBM silos. It may be that a higher level of hardness is intended and/or that a new or modified missile may be deployed.

Tests of modifications to the SS–11 and SS–13 have continued during the last year. Data acquired earlier from SS–9 tests suggests to some analysts an independent targeting capability. We have not as yet identified achievement of accuracies consistent with high probability of kill against hard targets for these reentry vehicles. There have been no tests of this system since late 1970, suggesting that the Soviets may have canceled or curtailed the SS–9 triplet program, possibly in favor of the new missile noted above.

Analysis of the latest projections concerning Soviet missile growth rates and accuracy improvements indicate considerable variation in the time period in which our Minuteman forces would be seriously threatened. In cases where small Soviet growth is assumed, Minuteman forces do not appear threatened until the early 1980's or beyond. For middle range assumptions, Minuteman could have less survivors in 1980 or before. If the most severe of the postulated SS–9 and SS–11 type missile forces were directed at Minuteman, the Minuteman force (assuming that the silos are undefended, but are upgraded in hardness) could be drawn down as early as the mid-70's. Prudence requires that we take the more pessimistic projections seriously.

Tests of modified versions of the SS–11 have been under way for some time. The new payloads may represent an attempt to improve penetration capability against active defenses, but the payload-accuracy combination of currently deployed systems is estimated to be inadequate at this time for an effective hard target attack.

U.S.S.R. SLBM'S

The operational Y-class force could reach over 40 units by the end of 1973. If production continues at the present rate—and there is no indication of slackening—the operational force could reach over 50 units by 1975. The present Soviet operational Y-class force is sufficient to threaten that portion of the SAC bomber force which is on normal alert at coastal bases.

Testing of a new long range SLBM continued in 1971. The intended platform for its deployment is unknown.

Peoples Republic of China (PRC)

The PRC continues to press toward an ICBM capability. There is some evidence that the Chinese may have initiated flight testing of an ICBM in 1971 and they may be in the first stages of developing an SLBM capability. A Chinese ICBM force of 10–20 silo launchers may be possible by 1976.

The Chinese conducted a nuclear test in 1971 which would allow them to refine and expand their thermonuclear weapons capability.

Diplomatic context

As the President stated in his foreign policy report to Congress on February 9, 1972, we may soon complete a SALT agreement with the USSR. The President also said:

"From the beginning SALT negotiations, it has been implicit that we would be willing to forego extensive ABM protection in return for the greater stability offered by an equitable limit on both offensive and defensive strategic forces. In deploying Safeguard, we have taken only those steps that are essential while preserving the option for an agreement on ABM limitations. These actions have given the Soviet Union an incentive for concluding an agreement controlling defensive deployments. Our future actions will continue to reflect progress made in SALT."

"In our decisions on deployments of strategic systems, on qualitative improvements and on SALT, our objective has been to act with restraint while preserving the security of the United States and its allies. Our present strategic forces are sufficient and we are moving toward an agreement which should stabilize the strategic balance and foreclose future rounds of arms competition. If, however, important systems are not constrained by agreements and the Soviet Union continues to build up its strategic forces, I will continue to take actions necessary to protect the national security."

Presently the focus of the SALT negotiation is being directed towards obtaining an initial agreement covering ABM systems, together with some limitation on offensive missile systems. We are hopeful that a SAL agreement can be reached soon. However, we cannot be certain of this, nor can we be sure of the exact provisions of such an agreement. Meanwhile, the Safeguard program now proposed enhances the probability of success in SALT.

The need to continue ABM R&D stems from at least three reasons:

We must hedge a requirement to protect our land-based retaliatory forces with ABM defenses in the event that such a defense becomes necessary.

We must be able to insure adequate penetration of our own offensive missile systems. U.S. ABM development efforts can provide background and knowledge which will help us understand the full implication of Soviet ABM activities.

We must be able to meet a possible requirement to deploy a nationwide area defense at some time in the future if there should be no SAL agreement prohibiting it. Such a defense is necessary if we are to satisfy the President's objectives to defend against a possible Chinese attack or accidental attacks from any source. The President has indicated that we would be willing to forego extensive ABM protection in return for the greater stability offered by an equitable limit on both offensive and defensive strategic forces. Meanwhile, we plan to continue development effort on improved light area defense components.

Safeguard progress

The research and development portion of the Safeguard program is progressing satisfactorily. The prototype Missile Site Radar (MSR) located at the Kwajalein Missile Range began radiating power in September 1968 and has been operating since that time. It has met or bettered all of its design objectives and no serious deficiencies have been found. Beginning in March 1969, check-out of the MSR data processing system was initiated and successful operation of four data processing units working in parallel has since been achieved. MSR software for the first part of the system test program has been completed and installed. Beginning in July 1969, tracking of local targets was accomplished with the initial software and, in December, 1969, two ICBMs launched from Vandenberg AFB, California, were successfully tracked.

The Perimeter Acquisition Radars (PAR) are under fabrication and the first installation will be at Grand Forks (the first Safeguard operational site). The Air Force FPS–85, a radar based on similar technology, has been operating since January 1969 at Eglin AFB in Florida. A limited engineering development model of the PAR was constructed at the Syracuse, New York, General Electric Plant during 1969 and has been undergoing test. No serious technical problems in this development have been encountered, and there is high confidence of meeting the presently scheduled date for the first PAR site.

The Safeguard system test program began at Meck Island in the spring of 1970 and 23 tests have been conducted to date. Of these, 19 have been completely successful, two partially successful, and two unsuccessful.

The first phase of the system test program contained 16 tests and was completed in the fall of 1971. This phase verified basic system design concepts and demonstrated system level integration of hardware subsystems while evaluating software programs to be used in later testing. The series included three successful Spartan intercepts of target reentry vehicles launched by ICBMs from California. In one of these three tests, two

Spartan missiles were launched a few seconds apart and simultaneously guided by the MSR, one to intercept the incoming reentry vehicle and one to intercept a space point. Sprint interceptors successfully intercepted target reentry vehicles launched by ICBMs from California in three tests in this series, one of which involved two Sprint missiles launched a few seconds apart and guided to successful intercepts of a single target reentry vehicle. Also, during this series of tests, Sprint successfully intercepted a target reentry vehicle launched by a Polaris missile ship located north of Meck Island.

The second phase of the Safeguard system test program began in the fall of 1971. This series of tests is being conducted with an advanced data processing program which contains more technical elements than the previous one. Tests in this series are designed to evaluate the integrated system using more complex intercept geometries which stress specific system functions. Seven tests, all of which were successful, have been conducted thus far in this series. These tests have included one Spartan and one Sprint intercept of target reentry vehicles launched by ICBMs from California, and one Spartan and two Sprint intercepts of target reentry vehicles launched by Polaris missiles. In all of these intercepts, the Spartan and Sprint interceptors do not carry any type of explosive warhead. The success or failure of the intercepts is verified by electronic means.

Command and control requirements for the interface with the Air Force Minuteman equipment have been defined, and a study of the integration of Safeguard with Continental Air Defense Command has been completed. No significant problems have been encountered.

There are no technical problems that would affect a decision to continue with the Safeguard deployment.

Construction on the first two Safeguard sites at Grand Forks and Malmstrom Air Force Base is now proceeding. Construction for Grand Forks currently is about 80% complete and about 5–10% complete for Malmstrom. A labor contract problem caused a delay in the Malmstrom site schedule of about 11 months. At Malmstrom, a contract has been signed and the local labor authorities are providing manpower to support construction.

All ground equipment for Grand Forks and Malmstrom is under procurement contract. Production of the operational Spartan and Sprint missiles to be deployed at the first two sites is under way. Procurement has been initiated for the Whiteman AFB site.

Proposed fiscal year 1973 program

Safeguard Deployment

In the absence of a SAL agreement, we propose to proceed with our previously planned defense of strategic retaliatory forces at four Minuteman sites by continuing our ongoing construction and installation programs at Grand Forks and Malmstrom, and proceeding with construction and procurement for the Whiteman and Warren sites. This program would be completed in late 1977.

We also propose to initiate advanced preparations for defense of the NCA at Washington, D.C. By starting this now, we can have a defense by early 1979. This will provide substantial protection of our NCA and its attendant command/control against a small or accidental attack, or afford additional valuable time for decision-making in the event of an attack on Washington. In particular, this deployment will counter SLBMs launched from submarines off our coast with very short times of flight. More specifically, such defense will discourage what otherwise could result in a situation whereby the NCA could be destroyed in a surprise attack, perhaps with a small expenditure of enemy resources; e.g., the missile from one Y-class submarine.

The Safeguard program plan for the longer term is to continue the measures deployment with additional sites as may be appropriate leading to the full 12-site deployment in support of the President's objectives for ABM defense. It has the necessary flexibility to be compatible with our nation's SALT efforts.

ABM R&D

With continued qualitative improvements in Soviet ICBMs even if there were no increases in the number of deployed Soviet ICBMs, the threat to Minuteman in the last half of the 1970s might grow to a level beyond the capabilities of the four site Safeguard defense of Minuteman. For this reason, the Site Defense of Minuteman (SDM) prototype demonstration program was started. The site Defense of Minuteman will be designed to protect Minuteman against a USSR attack which is more severe in numbers and sophistication than Safeguard is designed to handle. If deployed, it would augment Safeguard should a future threat make that advisable. The Deputy Secretary of Defense, on 14 January 1971, directed the Army to plan and carry out a prototype demonstration program. We consider that this program, designed to provide continuing effective defense of Minuteman, is a stabilizing influence in our relations with the Soviet Union.

The Secretary of the Army assigned the SDM mission to the Safeguard System Manager. An Army organization has been established and a System Engineering and Technical Assistance Contractor has been competitively selected. The program is on schedule. Three competitive contracts were awarded in June 1971 for prototype demonstration program proposals which were submitted on 30 November 1971. These proposals were evaluated by formal source selection procedures and a prime contract for the execution of the SDM prototype demonstration program was awarded on February 28, 1972. McDonnell Douglas Astronautics Company was awarded an initial funding of $10,000,000 for the first five months of a 60-month cost-plus-incentive-fee conrtact in the amount of $382,000,000. The entire demonstration program may cost some $700–$800 million, including funds for modified Sprint missiles which will be furnished by the government and including the System Engineering and Technical Assistance Contractor effort which are not included under the prime contract.

We propose a FY 73 SDM program funded at $80M in RDT&E funds plus $20M in construction for RDT&E facilities that would provide a prototype demonstration program which could be modified later if necessary to permit an initial deployment of the system in late seventies time frame. The SDM program will be continually evaluated as it progresses, taking into account threat developments, SALT, and other variables and uncertainties.

Our over-all FY 73 ABM program also includes continuation of area defense research and development leading to the capability to provide bomber defense as part of the Safeguard deployment, an improved NCA defense and an advanced nationwide area defense against light attacks. New funds for area defense are not requested as part of the Safeguard FY 73 program since adequate prior year funds are available. In addition, advanced area defense technology will be pursued in the Advanced Ballistic Missile Defense program.

Program cost and schedule

The deployment schedule for the proposed Safeguard program is shown below:

October 1974, Grand Forks.
Early 1976, Malmstrom.
Early 1977, Whiteman.
Late 1977, Warren.
Early 1979, Initial [1] NCA Defense.

Under the proposed program, the earliest Site Defense of Minuteman deployment, if found necessary, would be in the late seventies time frame. Substantial deployments could be available soon thereafter. The Safeguard and Site Defense of Minuteman funding requirements are as follows:

SAFEGUARD PROGRAM

[Total obligational authority in millions]

	Fiscal year—		
	1971	1972	1973
Weapon system acquisition cost:			
RDT & E	364.0	358.0	340.5
Army:			
Missile procurement	648.2	639.0	753.0
Other procurement	2.8	1.0	1.4
Military construction	357.0	119.0	390.0
Total	1,372.0	1,117.0	1,484.9
Site defense of Minuteman:			
RDT & E	25.0	60.0	80.1
Military construction, Army			20.4
Total	25.0	60.0	100.5

SUMMARY

Summarizing, we propose to:

1. Keep our program compatible with SALT.
2. Proceed with the planned Safeguard deployment at the four Minuteman sites.
3. Initiate advanced preparation for Safeguard defense of the NCA at Washington, D.C.
4. Plan for the longer term to continue Safeguard deployment leading to 12 sites.
5. Continue with the Site Defense of Minuteman prototype development program.
6. Continue with area defense research and development. This over-all AM program would:

Enhance probability for success of SALT.

Provide a start toward a level of protection, dependent upon the nature and severity of the attack, for Minuteman, and command and control centers in the central United States (Omaha and Colorado Springs) at the earliest possible time, and a base for defense of inland bomber bases with improved area defense components.

Provide a defense of the NCA against small attacks or accidental launches, and the means of affording added valuable time for decision-making in the event of a mass attack on Washington, D.C.

Provide the base for augmenting Safeguard defense of Minuteman sites in the future with SDM if threat developments warrant it.

Provide the base for introducing advanced nationwide area defense which could be available at a later time.

[From the New York Times, Mar. 22, 1972]

SOVIET MISSILE PERIL NOW FOUND UNLIKELY BY UNITED STATES TILL 1980's

(By William Beecher)

WASHINGTON, March 21—The Defense Department, which in the past has justified requests for a missile defense system by Russia's projected ability to destroy a large part of America's Minuteman missile force by the mid-nineteen-seventies, now estimates that this threat may not materialize until the nineteen-eighties.

The new analysis was revealed in testi-

[1] The initial defense of the NCA, Washington, D.C., is the same as would be provided in the 12-site Safeguard deployment and consists of a single MSR and Sprint interceptors.

mony today by Dr. John S. Foster Jr., before the Senate Armed Services Committee. It stems from the conclusion of the American intelligence community that Soviet tests of a three-part warhead for its giant SS–9 intercontinental ballistic missile have failed to demonstrate enough accuracy to seek out and destroy three separate Minutemen in their steel and concrete silos.

Dr. Foster, who is the Pentagon's director of defense research and engineering, said that Russia "may have canceled or curtailed the SS–9 triplet program."

Since there have been no tests of the multiple warhead since late in 1970, he said, some analysts have concluded that the Russians may intend to seek such a missile-kill capability in improved new missiles for which nearly 100 silos have been under construction since then.

Despite what appeared to be evidence of a less immediate threat, Dr. Foster said that the Nixon Administration still wanted to continue with the Safeguard missile defense system.

The Administration requested in the new defense budget about $1.5-billion to continue construction of defenses around two Minuteman complexes, to start construction at two more and to do preliminary work on a missile defense around Washington.

Dr. Foster's rationale for expanding the Safeguard program was based on two primary elements—a desire to continue pressure on the Soviet Union to conclude a strategic arms limitation agreement, and a hedge against achievement by the Russians of the ability to destroy a substantial part of the Minuteman force in the mid-to-late-nineteen-seventies, when the missile defense would be operational.

While noting the Administration's hope that an initial agreement limiting defensive and some offensive missiles can be achieved soon, Dr. Foster said: "We cannot be certain of this, nor can we be sure of the exact provisions of such an agreement. Meanwhile, the Safeguard program now proposed enhances the probability of success" in arms control talks. The arms talks between the United States and the Soviet Union are to resume Tuesday in Helsinki, Finland.

Other officials privately estimate that an initial agreement will probably be announced at the time of President Nixon's visit to the Soviet Union in May. Since the final shape of an agreement has not been worked out, they say, the Administration wants Congressional approval for an expanded defensive system to apply pressure on Soviet negotiators to accede to some American demands. They declined to go into specifics.

In his testimony today, Dr. Foster said: "Analysis of the latest projections concerning Soviet missiles growth rates and the accuracy improvements indicate considerable variation in the time period in which our Minuteman forces would be seriously threatened."

One analysis, he said, assuming a slow Soviet multiple-warhead development effort, suggested that the Minutemen would not be seriously jeopardized "until the early nineteen-eighties or beyond."

A second set of assumptions moves the point of jeopardy to about 1980, or slightly before, he said.

A third approach, assuming a high priority effort, would threaten survival of the Minutemen in a first strike "as early as the mid-seventies," he declared, adding: "Prudence requires that we take the more pessimistic projections seriously."

In the past, when the Russians were rapidly building up their force of SS–9's and testing three-part warheads of about five megatons each, Administration officials warned that, if the Russians perfected accurate multiple warheads, a force of 420 SS–9's could destroy about 90 per cent of America's 1,000 Minuteman missiles.

But the Soviet Union halted the SS–9 building program at about 300. And although some defense analysts insist that each part of the SS–9 multiple warhead can be controlled to a limited extent, most of them now concede that the control and dispersion of the existing system does not appear sufficient to go after three separate Minutemen effectively.

Within the Administration, the current argument is whether the Russians intend to try to develop a better multiple warhead for its existing missiles, or wait to deploy an improved system in the nearly 100 large silos constructed at several sites in the Soviet Union.

Tests of the missile for the new silos is expected soon, defense analysts say.

Well-placed Administration sources suggest that the United States and the Soviet Union may agree to limit anti-ballistic missiles to 200 in each country. They would also opt to halt temporary new construction of land-based missiles and conceivably sea-based missiles, pending negotiation of a comprehensive agreement at Helsinki.

The missile defense agreement would lapse after a specified time, they add, unless a more comprehensive agreement was achieved. Continued development of missile defenses, which the Russians do not want to see expanded in the United States, might keep pressure on the Soviet Union to conclude the more comprehensive agreement, these officials argue.

[From the New York Times, Mar. 28, 1972]

LAIRD PREDICTS SOVIET WILL START TESTS ON NEW ICBM's SOON

(By William Beecher)

FORT HOOD, TEX., March 27.—Secretary of Defense Melvin R. Laird predicted today that the Soviet Union would soon start test firings of new intercontinental ballistic missiles.

Such tests would dispell the mystery surrounding some 90 to 100 large missile silos, the first of which the Russians began building in late 1970.

Defense officials and other Administration aides have speculated that the silos are designed for either advanced versions of the existing SS–9 and SS–11 I.C.B.M.'s or for entirely new missiles.

Mr. Laird was asked at a news conference here what significance he attached to the fact that the Russians apparently had stopped construction of older types of missiles and had not dug any additional large new silos for several months. He replied that from time to time the Russians had halted "new starts" on missile silos for periods of 9 to 14 months while completing work on construction already under way.

PEAKS AND VALLEYS

He said there had been numerous "peaks and valleys" in the Russian missile build-up and suggested that there was no special significance in the present valley.

Asked whether the Soviets would test "fairly soon" the missiles expected to be installed in the large new silos, he declared:

"The answer to that is yes."

Asked to elucidate, he said: "No."

It is known that intelligence analysts in Washington estimate that the Russians are prepared for test launchings "imminently" from the missile test center at Tyuratam.

PATTERN IS FAMILIAR

At the time the new-design silos first were spotted at several operational missile complexes in the Soviet Union, similar new silos were reported being built at Tyuratam.

Analysts pointed out that such a pattern was familiar. They said in the case of two previous missile programs, those of the SS–11 and SS–9, the Russians built new operational silos and new test silos at the same time. Then, after a number of test launches from Tyuratam, they quickly deployed the new missiles, thus saving time.

Mr. Laird flew to Fort Hood today to witness the largest military training exercises to be held in the United States since 1965. More than 23,000 troops are taking part in the exercise, called Gallant Hand 72. It includes Army Air Force and reserve units.

ADMINISTRATION ATTACK ON FARMWORKERS

Mr. KENNEDY. Mr. President, I am disturbed by the recent actions of the National Labor Relations Board which represent a direct attack on the existence of the United Farm Workers Union, AFL–CIO.

What is most distressing, apart from the questions of violations of existing congressional law, is that the action represents the Federal Government's intercession on the part of corporate agriculture to deal a heavy blow at the one organization which has dedicated itself to improving the wages and living conditions of the Nation's farmworkers.

When we consider that agricultural workers are partially excluded from the minimum wage law, from the social security system, and from child labor laws as well as from the protections of the National Labor Relations Act, then it becomes flagrantly unjust to use the punitive provisions of that act against the union representing farmworkers.

When one views the recent spate of restrictive legislation filed by grower representatives in various States across the country and the combined activity of growers, shippers, and chain stores to kill the union, then it becomes particularly disturbing that the NLRB has reversed its long-held position in a way that lends support to those forces.

When one views the condition of the migrant workers and the seasonal farmworkers in this Nation over the past several decades, it is clear that the advent of the United Farm Workers Union has meant a new opportunity for workers who traditionally have been excluded from the protections of the law.

Now that the union has made major strides forward in California, in Florida, and in other States, we find the Federal Government's first act of intervention to be an effort to hamstring the union.

There also is a separate issue which is involved. Traditionally, there has been a vigorous opposition to the consideration of farmworkers under the NRLB on the part of the Congress. This has been manifest in the law itself as well as the rider which has been attached to appropriation bills every year since 1946.

Therefore, it is questionable whether the investigations conducted by the NLRB properly can be carried out since in large part they concern a union whose overwhelming membership is comprised of agricultural workers.

For that reason, several colleagues and I have sent a letter to the Comptroller General asking for his opinion of the propriety of expenditures of funds by the NLRB.

But beyond the issue of the legality of the NLRB's current activities in this area, there is a much more important policy question. That relates to whether

the Nixon administration, despite its repeated assertions of concern for the interests of the Mexican-American community, in fact, has decided to use Federal agencies to harass the efforts of the farmworker to organize and acquire for himself decent wages and decent working conditions.

Mr. President, I ask unanimous consent to have printed in the RECORD several articles on this subject.

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

WASHINGTON CONNECTIONS

(By James A. Wechsler)

While the headlines focus on evidence of the Nixon Administration's sympathetic intimacy with the rules of ITT, powerful agricultural interests have quietly won a key round in Washington in their long fight to cripple and ultimately destroy Cesar Chavez' United Farm Workers Union.

Over the telephone from California yesterday, the perennially embattled Chavez described recent moves by Peter Nash, Mr. Nixon's appointee as general counsel of the National Labor Relations Board, as "a clear Republican maneuver to put the union out of business."

Anyone who has watched Chavez during his long, valorous effort to organize people long consigned to the nation's lower depths knows he is not a doomsayer who lightly cries havoc. And the circumstances that produced this plea for public concern amply warrant his tone of urgency.

Stated simply, NLRB counsel Nash has authorized the West Coast regional office to seek an injunction against the use of the national boycott weapon in its organizing drives. If the injunction is granted, it would set the stage for administrative proceeding that could last one or two years. It could eventually open the way for damage suits that could bankrupt a union that has never wallowed in opulence.

The issue is not a new one; what is new is the NLRB counsel's open alliance with the growers, the repudiation of earlier positions and the adoption of a stand that is clearly inequitable.

Agricultural workers have never enjoyed the protection of the Labor Relations Act. Neither, however, have they been subject to the restrictions on secondary boycotts that were inserted in the statute when the Taft-Hartley amendments were enacted in 1947. In the past, attempts to invoke these punitive provisions have been turned aside on the simple and obviously just ground that employes denied the benefits of a law should not be vulnerable to its penalties.

But under the ingenious—and insidious—doctrine now being evolved by the Nixon-era NLRB, what can only be described as unequal justice would prevail. The move against the union is based on the claim that a few of its 50,000 members—admittedly a handful at most—are actually "non-agricultural" employes because they work in packing sheds. Therefore it is being argued that the organization itself loses its immunity from the restrictive clauses of the law.

At the same time it is now the government's contention that the union still has no claim to the protections of the act because their rights "flow to the employes" rather than their union, and agricultural workers are specifically excluded from the collective bargaining safeguards embodied in the NLRB.

It is hard to imagine any construction of the statute more flagrantly loaded on the side of special interests and more crudely designed to break a union that has faced—and survived—so much primitive harassment.

Chavez has often pointed out that nationwide boycott campaigns against anti-union growers and those who use their products—such as wine companies—have been a crucial source of strength. The nature of agricultural employment and the lack of protection against anti-union conspiracies involving growers and local officials create overwhelming obstacles to usual techniques of union organization. But Chavez, waging a passionate moral crusade, has succeeded in using such boycotts as an effective countermeasure. The grape boycott was the most celebrated; a similar program is aimed at lettuce growers.

"Now they propose to use the same law that has never given us any protection to take away our great source of strength," Chevez said yesterday.

"The boycott has been so important to us in maintaining our nonviolence pledge. Where do we go if they prevent us from appealing for peaceful public support in the form of boycotts?"

Chavez' hope now is that the manifest inequity of the NLRB move will produce a wide public outcry aimed at the campaign-conscious Republican National Committee and that prominent Senators will take up the union's cause.

Beyond all the technical legal formulas being devised by NLRB attorneys, elementary justice is Chavez' most compelling plea. Rarely has a selfless union leadership done so much with such limited resources for people who had been victimized so long; to invoke one-sided law against it now is a throwback to the spirit of pre-Wagner Act times.

In the present setting, this conflict can have large political overtones. For, regardless of where the ITT inquiry finally leads, enough is already on the record to dramatize the easy access of corporate power to the Administration's high echelons. The Chavez story has even sharper symbolism; the growers have finally secured the breakthrough that an earlier NLRB resisted: the most defenseless of the underprivileged are the prospective victims. This battle has just begun and it will surely underline the issue of whose doors are open to whom in Washington.

NIXON AND THE TACO-TAKEOVER

(By Nicholas von Hoffman)

The press is out of control again, trying to sell papers and make Nixon look bad like he's not against conglomerates. It's Jack Anderson, a known and self-confessed liberal, who's behind it, but, as usual, that's being kept from the people, who are being told many disrespectful stories about angina pectoris and the shredding machine. To listen to them, you'd think the government was nothing but grossed out liars and tacky bag men.

What you're not being told is how Nixon is fighting to keep the Mexicans from taking over and running a conspiracy on us to raise the price of food. That would be Cesar Chavez and his conglomerate, which also goes by the name of the United Farm Workers and has already driven the price of lettuce so high that many restaurants have put Ceasar salad on the menu to explain why.

But President Nixon has put Peter Nash in as general counsel of the National Labor Relations Board to stop the taco-takeover from paralyzing our economy. He's going into court in a few days to get an injunction that will forbid the Farm Workers from picketing or boycotting any more supermarkets. That should smash the union and bring down the price of table wine.

Always before it has been that agricultural workers were not covered by the National Labor Relations Board. That has helped prevent Chavez from getting a worker monopoly because it meant no Board-supervised elections for union representation, no protection from being fired for union activity, no nothing. Even so that Chavez, who's one smart frijole, was spreading out his monopoly power from the grapes to the cucumbers to the lettuce and the artichokes.

Now comes Peter Nash. He claims that somewhere between 30 and 300 (the number is in dispute) of Chavez' 78,000 dues-paying members aren't agricultural workers, but are industrial workers who fall under the jurisdiction of the National Labor Relations Board. Unions under the board's purview may not legally engage in secondary boycotts. Hence, the application for the injunction.

Ah, but get the neatness of this. This doesn't mean Chavez and the union will get any of the benefits that flow from coming under the board. They still won't have supervised elections or any of the other protections against employer unfair labor practices. No, they get only the disabilities and none of the advantages.

In the face of this, how can Anderson and those others say Nixon is soft on conglomerates? If there were any doubt, Chavez and the Farm Workers wouldn't be so worried about this. They know the government isn't kidding in its promise to smash excessive concentrations of economic power; they know that Washington isn't going to sit idly by while Chavez dominates the whole world enchilada and mole market.

Nor is there any backroom dealing on this one. No settling out of court. They're going to get that injunction and that will wipe Chavez out. It's his only weapon against agri-businessmen who only ask to be allowed to operate in a subsidy-free, open and competitive market.

If these Anderson charges were true, don't you think he'd have gotten the government to lay off? As a big-time conglomerator he'd have had the President get on the television and make an appeal to the courts not to grant the injunction, but to hold up until Congress could pass a constitutional amendment. Well, that kind of thing won't work in this White House where every hound's tooth sparkles cleanly in the sun.

Or, he could have gone the consent decree route. Like he could have gotten some asthmatic man to go to the Kentucky Derby with the Attorney General and seal the deal at the finish line. The government lays off the wetback Fruit and Vegetable trust and they get all the beans they can eat in San Diego this summer. If anybody asks any questions the asthmatic man will grab his chest and yell heart attack.

If not that, then Chavez could have sent somebody in to see Peter Flanigan. He's the guy from Dillon, Read, the fancy New York bankers. They're always in Washington. C. Douglas Dillon, Michael Forrestal, William H. Draper and Paul Nitze, all from Flanigan's company, have served in the topmost jobs through the Eisenhower, Kennedy and Johnson administrations. That Flanigan ought to be a guy who has the influence to swing a deal and write up a memo on it with disappearing ink.

Chavez wouldn't have dared try it. He knows that stuff Anderson writes is only good for smoking. If he'd tried to pull that on Flanigan, that Mexican monopolist would have got it from the Justice Department like the rest of those money bagging, golf playing, yacht sailing, campaign contributing breakfast worshippers when they get out of line. The law's the law with Nixon and that Mex had better know it.

CONSERVATIVE GROUPS MOUNT CAMPAIGN AGAINST CHAVEZ UNION

(By Steven V. Roberts)

KEENE, CALIF., March 25.—Less than two years after it won landmark contracts in the California grape industry, the United Farm Workers is under fierce attack, and its leaders are fighting for survival.

A well-organized, well-financed campaign has been mounted against the union by a loose coalition that includes the American Farm Bureau Federation, large corporate growers and shippers, right-to-work committees—and a variety of other conservative organizations.

The main target is the boycott, the weapon the farm workers union used successfully against the grape growers for three years ending in 1970 and is now employing against iceberg lettuce harvested by Mexican workers and against nine California wineries.

"They are using everything to hit us over the head," said Cesar Chavez, the union's director, whose headquarters are now in this mountain hamlet about 30 miles east of Bakersfield. "The right wing is spending a tremendous amount of money against us. They want to stop the boycott. They know it's the only way we can organize and they will do anything to take it away from us."

BOYCOTT A KEY WEAPON

The United Farm Workers is the first union to organize America's migrant agricultural laborers, and Mr. Chavez has gained an almost saintly reputation among workers for his leadership of La Causa, Spanish for "the movement." The boycott has been indispensable in that organizing campaign, because the migrants are too poor and too transient to conduct an effective strike.

To the union's opponents, however, the boycott is a "vicious weapon" and Mr. Chavez is a dangerous and power-hungry man. As the Free Marketing Council, an organization of growers, shippers, and chain stores, put it recently:

"Forces of coercion threatening a massive take-over of the nation's food supply in the field must be brought under control through state and Federal legislation."

Those attacks are growing at a time when the union has scored several notable success. In recent weeks the farm workers have won two major contracts in the Florida citrus industry, their first victories outside California and Arizona. In addition, the American Federation of Labor and Congress of Industrial Organizations upgraded the farm workers from "organizing committees" to a full-scale union.

NLRB SEEKS CURB

The most immediate threat to the union is a petition filed in Federal Court by the general counsel of the National Labor Relation Board. That petition asked the court to enjoin the farm workers from conducting boycotts, which are prohibited by the National Labor Relations Act. Arguments will be heard in Fresno on April 6.

The case presents a complex legal problem, since farm workers have always been explicitly excluded by the act.

However, the Free Marketing Council and other groups have charged that the union represents some workers who help pack produce for shipment. These workers are covered by the act, and thus the union should be subject to its restrictions, the complaints contend.

Korbel, one of the nine wineries now being boycotted, has also asserted that the union wanted to represent workers who were not agricultural laborers.

The requested injunction would stop boycotts until the labor board judges the case on its merits, a process that could take a year.

The farm workers reply that the workers in question account for one-tenth of 1 per cent of their total membership working under contract, which is about 60,000 workers. Moreover, they contend, the N.L.R.B. has consistently ruled in the past that farm workers were not covered by the board.

The difference, they say, is that until last August, the general counsel of the N.L.R.B. was Arnold Ordman, a Democrat first appointed by President Kennedy. When his term expired, the Nixon Administration replaced him with Peter G. Nash, a 35-year-old Republican from Rochester.

The N.L.R.B. decision to pursue the case, the union stated last week, was a "purely political" one "made at the highest level" of the Republican party. "It is nothing less than an effort to destroy our union," the statement said.

Union officials point out that large corporate farmers are generally strong backers of both President Nixon and Gov. Ronald Reagan. For example, C. Arnholt Smith of San Diego, an old friend of the President, controls a number of large ranches, and finances other growers, the union said.

CITED BY LIFE MAGAZINE

Life magazine charged last week that the Nixon Administration had "tampered with justice" by quashing an investigation of Mr. Smith's campaign-financing activities.

A spokesman for the N.L.R.B. called the union charges "bull" and added: "The only question is whether the evidence indicated there was a violation, and the general counsel concluded there was."

According to well-informed sources, however, there was some disagreement among the board's staff over whether to authorize the complaints against the farm workers.

One staff member expressed sympathy for the union and said it would be "very unfair" to subject the farm workers to the limits of the law, without the advantages. But that is what would happen if the complaints are upheld, he said.

The union has also been besieged on the legislative front. Lobbyists in about 15 states, often led by the Farm Bureau, have pushed for laws that would prohibit boycotts by farm workers. Usually the bills also contain clauses that would require elections before union recognition and hinder strikes at harvest time.

ADOPTED IN TWO STATES

Such laws have already been adopted in Idaho and Kansas. One passed the Oregon legislature last year but was vetoed by Gov. Tom McCall. A similar bill was killed in the California Legislature, but a campaign is starting here to place an initiative on the November ballot.

Just last week, a bill was introduced in Congress that would create an Agriculture Labor Relations Board. Its provisions are similar to the National Labor Act, but it would allow growers to demand arbitration if farm workers struck, and impose a 40-day waiting period.

Historically, farmers have opposed placing workers under Federal legislation, but when the grape boycott proved so successful, they changed their position. In its early years, the union wanted legal protection. Now it feels that any legislation would be so restrictive that it could not organize effectively, and it would do better outside the law.

The third arena of conflict is the lettuce fields of the Salinas Valley, the "salad bowl" of America. In 1970, after the grape victory, Mr. Chavez announced that Salinas would be his next target. Almost immediately, most of the growers signed contracts with the International Brotherhood of Teamsters as a way of warding off Mr. Chavez.

CONTRACT DENOUNCED

The farm workers denounced the contracts as "sweetheart" deals and struck the lettuce fields in August. A month later a boycott started and four large growers signed with the Chavez union, but the rest held fast.

Last March, the teamsters agreed to give up their contracts with the farm laborers. Mr. Chavez opened negotiations with the Salinas growers and imposed a moratorium on the strike and boycott. But after six months of no progress, the talks collapsed in November.

Last week, Mr. Chavez declared that the boycott would resume, and a new strike against the Salinas growers was imminent. The mood here in Keene is that the campaign will be a long and costly one. The lettuce growers are larger, wealthier and "more savvy" than the grape growers, according to Marshall Ganz, the Harvard graduate who directs boycott activities.

The union has already dispatched 200 organizers around the country to resurrect the boycott machinery.

The whole idea of a consumer boycott has lost some "freshness since the grape campaign," Mr. Ganz conceded. "But the American public is better educated about farm workers, and that's all helpful," he said.

"Lettuce is a tricky problem," Mr. Ganz added. "You can eat it in a sandwich or a salad and you don't think about it. It will take a lot of public education. Grapes became very stigmatized during the boycott—lettuce has to become a similar kind of symbol."

The tactics will again be grass-roots organizing among anyone who will listen: housewives, students, labor unions, civic groups. There will also be the publicity from a dramatic strike. As Mr. Ganz put it:

"The grape boycott never depended on the romance of it, but on grinding work. There is no substitute for that kind of commitment, and it's something the growers can't buy with money. It's a classic confrontation between money power and people power."

SENATOR PEARSON'S LEADERSHIP IN AVIATION

Mr. GRIFFIN. Mr. President, the distinguished senior Senator from Kansas (Mr. PEARSON), in a decade of service on the Commerce Committee, has become an acknowledged leader in the field of aviation. As ranking minority member on the Aviation Subcommittee, Senator PEARSON has worked to promote a viable system of airports and airway facilities that will serve the needs of aviation in the coming decades.

Senator PEARSON was an original sponsor of the Airport and Airway Development Act of 1970, and this landmark legislation already has been the statutory basis for assistance to hundreds of communities throughout the Nation. The act is structured to achieve a balance: Sufficient resources are committed to airport development as airway facilities are extended and modernized to promote safety in flying.

But Senator PEARSON's efforts have not been limited to Federal assistance in airport and airway development.

The air transportation system serving rural America has long been recognized as inadequate to meet the legitimate needs of citizens living there. To promote better local air service, Senator PEARSON has drafted and introduced the Limited Air Carrier Act, a bill which would provide for certification of commuter air carriers. This legislation could be the answer to the problems which small communities now confront. Many of these communities have seen their air service deteriorate in past years as Federal subsidies to the local service carriers have increased. Other small communities have lost service altogether, or never have been eligible for scheduled services from a certificated air carrier.

Hearings on Senator PEARSON's proposal will begin April 10, and I feel these hearings will launch a new effort to guarantee a viable system of air transportation throughout rural America.

Mr. President, the Wichita Eagle recently published an editorial commenting on our colleague's leadership in matters affecting aviation.

The Eagle has properly recognized the devotion to improvements in the field of aviation which Senator PEARSON has demonstrated over the years of his service in the Senate. I ask unanimous consent the editorial be printed in the RECORD.

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

PEARSON WORKS FOR AIRPORT DEVELOPMENT

James B. Pearson, senior senator from Kansas and long a friend of aviation, takes his job as self-appointed watchdog of the Airport-Airway Act of 1970 seriously.

Sen. Pearson was one of the three original sponsors of the legislation to establish a trust fund through aviation fuel taxes, an extra tax on airline tickets, annual registration fees for aircraft and an air cargo tax.

Just one year ago this month Sen. Pearson charged that the executive branch of the federal government was raiding the fund by attempting to pay salaries and operating expenses of the Federal Aviation Administration from the money collected.

He succeeded in amending the Airport-Airways Bill to protect the trust fund assets. The amendment, signed by President Nixon Nov. 29, 1971, provides that not less than $280 million be spent each year for airport development projects, not less than $250 million for air navigation system expansion and improvements with additional monies for general aviation facilities, research and development.

Last week Sen. Pearson, the ranking Republican on the Senate Aviation subcommittee, again introduced bills to improve the effectiveness of the Airport-Airways Act.

One bill would make about 90 airfields designated as military-civil joint use facilities eligible for airport development assistance grants under local sponsorship. These airports were eligible for federal grants under the old Federal Airport Act and through an oversight were neglected in the 1970 act.

Of the two airports coded for military-civil use in Kansas only Sherman Army Air Field at Fort Leavenworth is open to civilian pilots. Local sponsors could apply for matching funds to improve the airport.

McConnell Air Force Base has a 'letter of agreement' with the Boeing Company which allows aircraft, on company business, to land at the military field for a fee. It is not open to general aviation.

The bill, if passed, will insure that benefits from the Airport-Airways trust fund are available to all users of the civil aviation system.

Another bill would exempt owners of aircraft used exclusively for agricultural operations from paying the aircraft use tax and would provide for a refund of the seven cents per gallon fuel tax to the agricultural aircraft operator with the consent of the farmer buying the service.

Kansas has 112 registered aerial applicators in the state who would be affected by the bill. The operators should not be required to pay a user tax that provides little direct benefit to them.

THE ICC AND ECOLOGY

Mr. TAFT. Mr. President, in the March 1972 issue of Traffic Management, the associate editor, Lawrence M. Lesser, has written an article entitled, "Freight Rates and the Environment: A New Dilemma." This article points out how ICC rate policies discourage recycling and run counter to the objectives which we are attempting to seek on the environmental front. Because this is a subject of critical importance and because it reminds us once again of the great need for rail rate reform, I ask unanimous consent that it be printed in the RECORD.

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

FREIGHT RATES AND THE ENVIRONMENT: A NEW DILEMMA

(By Lawrence M. Lesser)

"We now have the technology to recycle much of the material that is treated as waste and thereby return it to useful purposes; however, market and other incentives in recent years have tended to work against recycling."—1971 Report of the President's Council on the Environment.

A major battle is shaping up among shippers, the railroads and the federal government over constantly rising freight rates for the movement of the nation's solid waste material, such as junked automobiles, refrigerators, washing machines, and soft drink and beer cans.

The fight pits shippers, environmentalists and two government agencies on one side versus the railroads and a third federal agency on the other.

One of the most important determinants of how much solid waste littering the nation can be economically reclaimed is the transportation rate level. Rail freight rates have risen 31% in five years and pose a sizable obstacle to the elimination of land pollution.

The President's Council on Environmental Quality and the Environmental Protection Agency both have recognized this problem and have asked the Interstate Commerce Commission to eliminate what they claim is discrimination against the movement of solid waste. So far, their pleas have fallen on deaf ears.

Last November, M. J. Mighdoll, executive vice president of the National Association of Secondary Material Industries (NASMI), whose over 700 members have an $8 billion combined annual sales volume, told the Congressional Joint Economic Committee's fiscal policy subcommittee that many freight rates for recycled materials are as much as 50% higher than for their virgin counterparts. Said Mr. Mighdoll:

"In addition to establishing inequitable rates which directly produce a market imbalance to the disadvantage of recycled materials, many rates on low-value commodities are not established with any relevancy to the nature or value of the material. This is significant since a large proportion of solid waste is comprised of low-value materials.

"We have numerous examples of recoverable and reusable materials which defy economic recycling inasmuch as the cost of collecting and transporting the material alone exceed the potential market value of the material at the consumer delivery point."

Figures assembled by NASMI show that it costs $2.59 per ton to ship pulpwood—the virgin counterpart of waste paper—from Roanoke, Va. to Roanoke Rapids, N.C. by rail—a distance of 205 miles—but $5.40 per ton to ship waste paper over the same route. The rate on copper ore from Los Angeles to Tacoma, Wash. is $17.05 per ton, but it costs $26.80 per ton to ship copper scrap between the same points.

Likewise, a recent study by Battelle Columbus Laboratories found that rail freight rates on iron and steel scrap average $1.49 per ton higher than rates on iron ore. Similar rate disparities exist for numerous other types of waste traffic as well.

Each percentage rail rate increase approved by the ICC just widens the gap further and throws a monkey wrench into private industry's efforts to clean up the environment.

The railroads, however, do not see it that way. They cite pressing revenue needs and claim that any possible adverse environmental impact will come only if they are unable to provide adequate service and rail traffic is forced to move by truck.

"From a pollution standpoint," argues Charles L. Smith, chairman, Traffic Executives Association-Eastern Railroads, "the motor carriers contribute a great deal more per ton of freight to the pollution problem than a 100-car freight train pulled by a diesel engine. That 100-car freight train would represent 150 or 200 motor trucks."

Waste material traffic, particularly iron and steel scrap, represents an important source of revenue to the railroads. Each year, steel mills purchase some 30 million tons of iron and steel scrap, all of which moves by rail. In 1970, this traffic brought the railroads $136 million in revenue—$6.8 million more than in 1969—even though they carried 1.6 million tons less.

The scrap-iron shippers, although sympathetic to the carriers' revenue needs, charge that the rail rates discriminate against steel scrap in favor of iron ore. They further argue that since scrap iron is the only direct competitor of iron ore as an input to steel production, equitable rate relationships should be maintained to encourage scrap recycling rather than exploitation of a limited domestic natural resource. If the rail rates are too high, they point out, scrap metal won't move due to high prices.

The railroads, however, do not admit to any discrimination against scrap iron. "I don't know what they mean by that," says Mr. Smith. "We just set rates on scrap iron, period."

Whatever rate disparities exist, Mr. Smith explains, are justified by different facts and circumstances surrounding the movement of each commodity—namely, different weight loadings (iron ore loads heavier per car) and different distances transported (iron and steel scrap generally travels further). He argues that there is no connection between scrap prices, freight rate levels and environmental impact.

Thomas Willson, vice president of the American Iron and Steel Institute, the basic steel producer trade association, disagrees sharply with the railroads' assessment of the situation. "The scrap metal guys have to pay a tremendous premium," he says. "Recycling won't ever be strongly accelerated until these tariffs are changed."

So far, the ICC has sided with the railroads. In authorizing a 20% general rate increase in the combined Ex Parte 265 and 267 proceeding last March 23, the Commission did order a token hold-down on 3% on materials used in recycling, but it also adopted the rail position, with Commissioners Dale Hardin and W. Donald Brewer dissenting, that there is "little if any correlation" between rates and the market for iron and steel scrap. Said the majority:

"We are not persuaded that rail freight rates on scrap have any material impact on the decisions which result in removal of wrecked automobiles and other scrap metals pursuant to antipollution measures."

The Commission also refused to accept the position of the Institute of Scrap Iron and Steel (ISIS), a trade association of 1,300 scrap processors, that scrap iron and iron ore compete to the extent they require similar rate treatment. Instead, it found that the proposed rate increase on iron and steel scrap would not be "detrimental" to the nation's antipollution program because of any resulting advantage to the movement of iron ore.

Eight months later, however, in apparent contradiction to its earlier decision, the ICC acted to *actively encourage motor carriage* of waste products. In Ex Parte MC-85, "Transportation of 'Waste' Products for Reuse and

Recycling," the Commission ruled that for-hire motor carriers wishing to transport recycled material to be used in a "recognized pollution control program" will no longer have to pay expensive filing fees and go through lengthy hearings to get ICC certification.

This action represents a landmark Commission decision in the area of environmental protection. Taken as a whole, however, the ICC's environmental actions to date puzzle some observers, such as Commissioner Hardin. He says:

"It appears to me inconsistent, on the one hand, to seek to encourage motor transportation of waste products and, on the other, to approve rail rate increases which may have the effect of embargoing rail transportation of these low-value commodities."

The Commission also was taken to task recently by a group of George Washington University law students who urged the ICC not to approve further rail rate increases—and to roll back two previous ones—until the railroads bring their freight tariffs into conformance with environmental regulations.

In its Ex Parte 265 and 267 decision, the Commission brushed aside the scrap metal shippers and environmentalists by suggesting that if they wished to further pursue the inequity in freight rates, they could do so at a later date in Ex Parte 270, the ICC's broad investigation of the railroad rate structure. However, in an Oct. 6, 1971 reply to a query from Congressman John Dingle (D.-Mich.), ICC Chairman George Stafford stated:

"This Commission has no authority to exercise specific planning functions with regard to the environment . . . We are anxious to participate in implementing the spirit of the declaration of national environmental policy. However, in view of past litigation regarding the matter of scrap materials in Ex Parte 265 and 267, in the pending proceeding Ex Parte No. 270, it would be unwise in my opinion to invest any more of our limited resources at this time on this particular issue."

The above letter notwithstanding, high-level Commission sources admit the agency may have to construe its environmental responsibilities under existing law more broadly in the future or risk being taken to court by shippers and/or environmentalists.

These sources also concede the agency may even have to hire its own environmental experts and set up an office of environmental impact. "After all," one commissioner admitted to Traffic Management, "we're not environmental experts."

A federal district court has already bounced one ICC decision back to the agency because it failed to prepare an acceptable environmental impact statement as is now required by law.

The environmental issue clearly has the ICC in a bind. On the one hand, it must look after the railroads' very real revenue needs; on the other, it must comply with the intent of Congress, as stated in the National Environmental Policy Act of 1969. That statute requires all federal agencies to examine the environmental impact of all major proceedings.

Commissioner Brewer spoke of the dilemma facing the ICC in a recent speech before the annual convention of the Institute of Scrap Iron and Steel in Washington, D.C. Mr. Brewer said:

"While we on the ICC must be aware of the need to transport your products at a profit, we must also recognize our responsibility in maintaining a viable, economical and healthy transportation system.

"Even though the scrap industry is surely on the side of the angels when we talk of conservation and recycling, your industry still must be realistic in dealing with the carriers on whom you must rely. The carriers are in business to make money just as you are. In order to remain viable, they must return a profit."

The scrap shippers, for their part, recognize the railroads' revenue needs. Says Dr. Herschel Cutler, executive director of the Institute of Scrap Iron and Steel:

"We have repeatedly said the railroads are entitled to rate increases. Our only objection is to the disproportionate impact of their proposals."

Shippers of metallic scrap must rely totally on the railroads to move their traffic, since most steel mills will not accept inbound motor shipments to their plants.

Looking down the road a bit, it becomes readily apparent that increased collection, redistribution and recycling of the solid waste that covers America today will depend greatly upon the availability of adequate and efficient transportation. Vast amounts of additional transport capacity will be required in the years ahead to ensure that industrial waste materials suitable for reuse find their way back to the steel mill, the paper mill and the glass factory.

Reclamation of the nation's solid wastes for recycling introduces a completely new distribution channel to the industrial production system. It also has brought a brand new transportation problem—one that must be solved if the national goal of cleaning up the environment is ever to be achieved.

JERSEY CITY COUNCIL RESOLUTION ON NORTHERN IRELAND

Mr. KENNEDY. Mr. President, last month the Jersey City Council unanimously approved a resolution in support of Senate Resolution 180, the resolution on Northern Ireland that the Senator from Connecticut (Mr. RIBICOFF) and I have submitted. In its action, the council urged the legislature of New Jersey to go on record in favor of our resolution.

The terms of the resolution approved by the council are identical to those in our Senate Resolution. I am gratified with this fresh evidence of support for our position, I ask unanimous consent that the text of the Jersey City Council Resolution be printed in the RECORD.

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

RESOLUTION ADOPTED BY THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY, FEBRUARY 15, 1972

The members of the Jersey City Council urge that the Legislature of New Jersey go on record in support of the Senators E. Kennedy and A. Ribicoff's Resolution 180 (Northern Ireland Bill).

The Council as a Whole offered, and moved adoption of the following resolution:

Resolved, That the Senate of the United States expresses its deepest concern over the present situation in Northern Ireland, and in accord with fundamental concepts of non-discrimination, fairness, democracy, self-determination and justice, requests the Government of the United States at the highest level to urge the immediate implementation of the following actions:

1. Termination of the current internment policy and the simultaneous release of all persons detained thereunder.

2. Full respect for the civil rights of all the people of Northern Ireland, and the termination of all political, social, economic and religious discrimination.

3. Implementation of the reforms promised by the Government of the United Kingdom since 1968, including reforms in the fields of law enforcement, housing, employment, and voting rights.

4. Dissolution of the Parliament of Northern Ireland.

5. Withdrawal of all British forces from Northern Ireland and the institution of law enforcement and criminal justice under local control acceptable to all parties.

6. Convening of all interested parties for the purposes of accomplishing the unification of Ireland.

POPULATION LIMITATION

Mr. PACKWOOD. Mr. President, one thread underlining the entire report of the Commission on Population Growth and the American Future, on which I served, was the emphasis on voluntarism and the rejection of compulsion in all matters concerning population and childbearing. The voluntary approach is one which I have consistently endorsed and stressed in all discussions on the population issue.

Two recent statements on this same question have recently been published by the highly respected Population Reference Bureau. The first statement was written by Mrs. Harriet Pilpel and is entitled "Limiting Population: The Voluntary Approach." The second article in response to the first is by Michael Brewer, and is entitled "Voluntarism and Coercion: The Ground Between."

These two statements bring out some of the explicit and implicit aspects of voluntarism against compulsion. I commend them to Senators and ask unanimous consent that they be printed in the RECORD.

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

[From Population Profile, November 1971]

LIMITING POPULATION: THE VOLUNTARY APPROACH

(By Harriet F. Pilpel)

The history of man has been marked by an overriding dream and ambition to become master of both his natural and social environment. On the natural environment side there has been the desire to fly, to reach the moon, to live forever, to be able to create new human beings at will. On the social side, there has been the desire to be both free and safe, to live in a peaceful world in which needs, spiritual and physical, will be met rather than the subject of an unending struggle.

To a startling extent some of these age-old yearnings have been fulfilled in the last decade or so. Flying we have been doing for some time and we have now set foot on the moon. We have not mastered the secret of how to live forever, but there is a lot of talk about "freezing" people for revival in future years. And while we have not yet achieved test tube babies, we are technically able to control human reproduction by means of contraception, sterilization and safe abortions.

The problems in this area today inhere not in our ability to control, but in our failure thus far to develop social mechanisms and patterns of behavior which will utilize our technical ability to improve the quality of human life rather than destroy it.

By and large we have not developed such mechanisms and patterns. We can fly to the moon but we have not yet figured out a way of handling air pollution, noise problems and in-the-air and on-the-ground congestion caused by those wonderful flying machines which, with television, have put us all together in a "global village."

Nowhere is the contrast more evident between what we can do to control the forces

of nature, and what we do to make such control work for us positively as human beings, than in the field of human reproduction.

Granted, you may say, but how is this a civil liberties question? The answer is that the right to decide whether and when to have a child is a basic civil liberty, and by the free exercise of that right we determine the constituency and quality of the world of the future.

However, and as is the case with all constitutional rights, this right is not absolute. Unless we meet problems of overpopulation with its resultant pollution, etc., head on, this right of each person may conflict with the right of society as a whole to restrict its free exercise for the benefit of the many.

I submit this time of crisis has not yet come and that it may never come. I am convinced that if we really make freedom of choice possible with respect to human reproduction, there will be no need to resort to compulsion.

LEGAL DECISIONS

It was a scant six years ago that the U.S. Supreme Court first acknowledged the existence of a constitutional right to decide whether and when to have a child, in the case of *Griswold* v. *Connecticut*, invalidating the Connecticut law which forbade the use of contraceptives in that state.

Prior to that time, the Court had enunciated the general principles of "the right to be let alone" in a number of cases involving other aspects of human freedom which seemed to many of us to compel the declaration of such a right in connection with the all-important matter of our reproducing ourselves. However, such a right in this context had never been spelled out in so many words.

Since *Griswold* the right of freedom of choice in matters of human reproduction has been given greater definition by the U.S. Supreme Court, by other courts and by the United Nations.

The Supreme Court of California, in the now-famous *Belous* case, based its decision that the "old" California antiabortion statute was unconstitutional on several grounds—one of them being that it was an unconstitutional abridgement of the women's right "to choose to bear children" which "fundamental" right that court said "follows from the Supreme Court's and this court's repeated acknowledgement of a 'right of privacy' or 'liberty' in matters related to marriage, family and sex."

Similarly, the Federal District Court for the District of Columbia in the equally famous *Vuitch* case stated:

"There has been, moreover, an increasing indication in decisions of the Supreme Court of the United States that as a secular matter a woman's liberty and right of privacy extends to family, marriage and sex matters and may well include the right to remove an unwanted child at least in early stages of pregnancy."

When the *Vuitch* case reached the U.S. Supreme Court, the Court did not pass upon the basic question whether there is a constitutional right to decide whether or not to have a child. That question may be decided in two other cases, one from Texas and one from Georgia, currently before the U.S. Supreme Court.

Court challenges to abortion laws are pending or contemplated in many other states. In New York, while a case was pending on the question of the validity of a law prohibiting abortion except where a physician had a good faith belief that it is necessary to save the life of his patient, the New York State legislature repealed the old law and made abortion a matter for decision by a woman and her physician. Seventeen states have modified their abortion laws. Three—Hawaii, Washington and Alaska—like New York, have virtually repealed their old laws; 12 have modeled their laws on the American Law Institute formula of permitting abortion not only to save life but also to protect physical and mental health, to avert the birth of defective offspring, and in cases of rape and incest. (Mississippi's only additional ground is rape.) Many other states are considering legislation to repeal or substantially reform their abortion laws.

Notwithstanding, however, this accelerating trend in the direction of making freedom of choice available, the laws and official and professional attitudes today applicable to human reproduction in the United States, viewed against the realities of today's world, add up to a crazy-quilt pattern with overtones seriously threatening to civil liberties. For example, even the repeal states, except New York, impose residence requirements for abortion.

On the one hand, we have the population explosion or, if we want to broaden our view, the threat of ecological crisis. The fact that such a threat must be dealt with hardly needs substantiation at this point. On the other side of the coin, we see that countless millions of people are still not given the opportunity to decide whether they want to limit their reproduction.

While the recent statutes and the cases holding various antiabortion laws unconstitutional seem to indicate a trend, abortion—which unfortunately remains the number one method of birth control in the world today—is still illegal in a majority of states, except to save life (whatever that means). It is also illegal in many other nations whose population problems seem already to be critical.

MORE RESEARCH NEEDED

Relatively piddling amounts of money are spent for research in the field of human reproduction, including the search for new and more effective contraceptives. Little is done to assure the delivery of the contraceptives we now could have available to all; it is estimated that even in the United States, something like four and one-half million low-income women are without effective access to contraceptives. And the general apprehensiveness of the medical profession about malpractice suits, although without realistic basis in this area, inhibits the making available of voluntary sterilization.

Moreover, we have laws based on outworn notions of morality (outworn in the sense that they bear no relation to the conduct of today's youth and many, if not most, of today's adults, at least in the Western world). We have laws which intimidate those who would make contraception and abortion services accessible to our youth. Our youth account for 40 percent of all illegitimate (and, therefore, mostly unwanted) births in the United States. And who knows how many young people are among the estimated one million women who each year get abortions, most of them illegal?

While the logical answer to all these problems would be to provide safe methods of contraception and voluntary sterilizations and abortions to women who want them, i.e. to guarantee to all women the freedom to decide whether or not to bear children, greater freedom is—unfortunately—not the only solution that has been suggested. Although neither voluntary birth control nor voluntary abortion nor voluntary sterilization has ever been made available to large segments of our people, we begin to hear voices demanding compulsory birth control and compulsory sterilization in the face of the population crisis on one side and burgeoning birth rates on the other. Little has been said so far about compulsory abortion because even the most myopic among us readily perceive that there is no point in making abortion compulsory when it is not yet even optional in most states.

Yet many people are advocating tax "disincentives," reduction in welfare payments, penalty taxes, making excess childbearing a crime and, most frighteningly, compulsory sterilization.

CIVIL OBLIGATION

In the face of such threats, civil libertarians have an obligation to make their own appraisal of the situation.

No constitutionally guaranteed personal liberty is absolute—or as Mr. Justice Holmes put it, freedom of speech does not embrace the right to call "fire" in a crowded theatre unless there is a fire. The question in the "population" area today is whether there is a fire—and if so what constitutional means there may be for putting it out.

It is well settled that "where there is a significant encroachment upon personal liberty, the state may prevail only upon showing a subordinating interest which is compelling," according to a 1960 Supreme Court ruling, *Bates* v. *Little Rock*. Moreover, even if there is a "subordinating" and "compelling" interest, a valid "governmental purpose" may not be achieved by means which "sweep unnecessarily broadly and thereby invade the area of protected freedom," says a 1964 decision of the same court, *NAACP* v. *Alabama*.

In the light of the known facts, population limitation may be—or may become shortly—a "compelling" necessity in the United States, as it may already be in other nations. The question then arises: What rational means which do not "sweep unnecessarily broadly" may government adopt to meet the actual or threatened crisis?

Many of those who address this basic question today come up right away with the answer that some degree of governmental coercion is immediately called for. All "population control" measures rest on the premise that freedom of choice in matters of human reproduction is a luxury we can no longer afford.

It seems to me that it is up to civil libertarians to point out, to the contrary, that freedom of choice in his area is a "luxury" we have never had—that indeed it is not a luxury but a right, first declared unequivocally only six years ago in the *Griswold* case and by no means yet implemented.

GIVE VOLUNTARISM A CHANCE

In other words, from the civil liberties standpoint we should continue to work to make freedom of choice possible and not countenance its abandonment in favor of coercion and compulsion until and unless we have first really tried it and found out it doesn't work—something we have never done.

This conclusion is inevitable if we consider the question against its own background in the United States. Many of the anti abortion laws have been on our statute books for over a century. Even if they are repealed en masse or declared unconstitutional, we will have only taken the first step along the road to implementing freedom of choice as to abortion—for our doctors are already overburdened and our hospitals crowded and neither doctors nor hospitals are experienced in setting up abortion delivery systems.

However, new techniques of abortion (such as the vacuum aspiration method and the new abortifacient pills and injections still in the experimental stage) do not require overnight hospitalization and even with the conventional older methods, one million—more or less—"illegal" abortions in the United States annually have been done on an outpatient basis, of course. Moreover, some of the new procedures may not have to be done by physicians but may eventually be applied by paramedical personnel under medical supervision.

While the day seems to be coming when abortion on request will not only be legal in all 50 states but will also be practically and economically available, that day has by no means arrived. It would be well if those who are calling out for coercive control measures

concentrated their energies on establishing a right to abortion including the means of exercising that right.

Nor have we freedom of choice in the contraceptive area. This is partly for technological reasons: We have not yet developed a thoroughly acceptable contraceptive. What has appeared to be the most nearly acceptable, the pill, was so strenuously attacked by some spokesmen at the Senate hearings presided over by Senator Gaylord Nelson that despite the fact that no new or more alarming data emerged from the hearings, many women have abandoned its use and many others have decided not to use it. The IUD and the vaginal diaphragm appear to be the best two remaining methods, but both have a larger failure rate and in any event are not psychologically or physiologically useable by a not inconsiderable number of women. So again, if the "controllers" would concentrate more of their fire on getting more funds for more research, they might accomplish more in the way of reducing the birth rate than they do by threatening or contemplating coercive measures.

Freedom of choice is hampered, also, by legal obstacles. At least two large states—Massachusetts and Wisconsin—continue to limit the distribution of contraceptive supplies to married persons, and in Massachusetts even the married may buy contraceptives only on a doctor's prescription. (The validity of the Massachusetts law is now before the U.S. Supreme Court for decision.)

The law as to minors' getting contraceptives are unclear and restrictive. Yet despite official restraints on voluntary contraception, a recent article in the American Bar Association Journal urged compulsory contraception in the form of IUD's for sexually active teenagers. Aside from the fact that the law needs considerable clarification in order for teenagers in most states to obtain contraceptives on a voluntary basis, and aside from the frightening curtailment of personal liberty which would be involved, a further objection to this rather "unusual" recommendation is that the authors do not go into the question as to how this requirement is to be enforced. Assuming you can threaten a teenage girl with sufficiently unpleasant alternatives (presumably detention) so that she does go to a doctor to have an IUD inserted, how do you compel her to keep it there?

BIRTH CONTROL PROGRAMS

Many states have not adopted realistic birth control programs; and while the federal government has to some extent made up the slack, the amounts appropriated for services are small compared to what could be utilized.

To say to the four to five million women in the United States who have never had the chance to practice voluntary family planning that the time has now come when they must by government fiat use birth control would be absurd—and in my opinion unconstitutional.

The studies of Jaffe and Polgar show that desired family size among the poor and indigent is smaller than the size preferred by the upper and middle income groups.

The recent investigation by Professor Westoff et al. indicates that some 20 percent of all the children born in the United States annually are unwanted. And, as is to be expected in the light of the lack of access by many of the poor to birth control information and services, the poor have more unwanted children than the rich.

The story is similar with regard to sterilization. It is true that except in Utah (Connecticut has recently changed its law), voluntary sterilization for any and all reasons is entirely legal in the United States. But the fact that it is legal has not meant that it has been available. Far from it. The hospital and medical professions have imposed strict limitations on its availability. The Catholic hospitals, which serve substantial parts of our population, won't perform sterilizations at all (or prescribe contraceptives or perform abortions) despite their quasi-public status as tax exempt institutions. Most other hospitals, if they perform voluntary sterilizations at all, have set up sterilization committees which significantly limit the availability of voluntary sterilization to both men and women.

We see here the same paradox: calls for the imposition of compulsory sterilization without first making sterilization available on a voluntary basis—especially for those who cannot afford substantial physician's hospital fees. Although it is estimated that there are about 750,000 or more voluntary sterilization operations performed in the United States every year, this is probably a small proportion of those that would be done if this alternative really existed for millions of our citizens.

"YOU MUST—YOU CAN'T"

It is always easier to insist that "there ought to be a law" and to think you've solved the problem with a "you must" or "you can't" than to eschew coercion and go through the tedium of adopting practical programs to change what is (which means you first have to find out what is) to what should be.

It is for civil libertarians to recognize what needs to be done to avert a totalitarian pattern of laws as to human reproduction. Unless and until it is clear that voluntary measures, legally and factually available (which they never have been), won't and can't eliminate the threat of overpopulation, government coercion and compulsion are contraindicated.

It is for civil libertarians to acknowledge that while the state must more and more assume the responsibility for the physical and material well-being of its citizens because our interdependent mass production economy demands this as the price of its functioning and our survival, the state must stay out of the moral and spiritual aspects of their lives. What a man thinks, feels and believes should be of no concern to the state. nor should what he does in his private life, except when he harms others. (This view is the converse of the traditional—and outmoded—view of the role of the state as keeper of men's morals with no responsibility for the collective conditions of physical life, including the basic necessities of physical survival.)

If this distinction is carried over into the field of human reproduction, the way of the civil libertarian is clear. Yes, indeed, the state should act to make real freedom of choice possible. It should do everything from repealing repressive laws, to encouraging research in contraceptive and abortifacient technology, to ensuring effective delivery of services on a voluntary basis to all segments of our population, to waging educational campaigns.

If we pursue these objectives, we should be able to take a long step in the direction of solving the population problem without resorting to compulsory measures which would strike at the roots of one of our basic freedoms: the right of free choice in matters of human reproduction—no less basic because it has so recently been recognized and acknowledged.

VOLUNTARISM AND COERCION: THE GROUND BETWEEN

(By Michael G. Brewer)

Two basic questions underlie discussions of population growth in the United States: how serious and urgent the problem is and what should be done about it. The answers tend to be connected. The more urgent the problem appears, the more radical the solutions proposed are likely to be.

Nevertheless, it is possible, and even rational, to assign great importance to the reduction of fertility and still oppose drastic measures to achieve that goal. The author of the preceding article clearly believes that reducing fertility is an important social goal. At the same time, she builds a strong case that would permit individuals to reduce fertility voluntarily, without coercion.

The line between voluntarism and coercion, however, is not always clear.

The essence of voluntarism is a decentralized decision system—one in which choices among available options are made by individuals. Such a system can prove unsatisfactory. Decentralized decisions can yield results which are far from socially ideal, in a "tyranny of small decisions." One example of such a failure would be private discretion in the use of common property resources, which often leads to overuse, despoliation, and possibly destruction. Such institutional deficiencies have been noted in discussions about air and water pollution and other environmental problems, and sometimes have been referred to as "the Tragedy of the Commons."

When the pursuit by individuals of their separate interests leads to substantial social losses, one possible solution is to modify the ground rules under which individual decisions are made, to increase the compatibility between enhancement of individual welfare and the welfare of the society at large. Modifications of this sort can consist of removing subsidies that stimulate socially detrimental behavior, or placing legal constraints on individual choice.

Regarding the dynamics of U.S. population, there are opportunities for both kinds of modification of the ground rules. Major public subsidies are provided for the bearing and rearing of children in the United States, of which free public education probably is the most significant. Not only does society pick up the bill for certain costs; it also positively rewards parents through devices such as income tax deductions for dependent children.

Of course there also are institutions that obstruct population growth. These tend to be more recent phenomena, associated with a growing recognition of the social costs which result from rapid growth. The understanding that congestion, environmental pressure and increasing costs of extending public services are all concomitants of a rapidly growing population has not yet led to clear prohibitions concerning parents' decisions to have children. On the other hand, certain communities have begun to impose constraints on land use, through zoning and other regulations, which, it could be argued, have a limiting effect on population growth in particular communities.

THREE KINDS OF CONSTRAINTS

The immediate discussion, however, is concerned with other types of infringements on freedom of individual choice. Pilpel is concerned with the limited range of possibilities available to parents or potential parents interested in family planning. Basically there are options involving contraception, sterilization and/or abortion. At least three categories of limitation of options can be identified:

Constraints imposed on choices which have low probability of harming the individual or his society.

Limitations imposed because of uncertainty about possible harmful consequences.

Constraints imposed because the options themselves are not yet fully devised or developed, and consequently are not available for individual use.

Any society imposing the first type of limitation is open to the indictment of depriving the individual of his freedom. Efforts to facilitate family planning in the United States are severely limited by existing state and federal laws. The Comstock laws

prohibiting the mailing of contraceptive information and devices, which were not repealed until January 1971, are a prime illustration of morally sanctimonious behavior by government that resulted in depriving individuals of reasonably effective and safe options for family planning.

Constraints of the second type have posed continuing problems to our society. What is the right of the individual to jeopardize his own safety? Sharp debate on issues of this sort is frequent. The automobile industry, for example, is sometimes accused of arguing that inexpensive transportation is more than adequate compensation for the lack of safety features, which suggests that limitations should not be placed on a product on the grounds of possible danger to individual users. The consumer movement, on the other hand, which urges that various foods be taken off the store shelves because of questionable nutritional values or because of possibly harmful additives, implies that variety and taste should be subordinate to safety.

In the population area the argument has surfaced with respect to birth control pills. The powerful drugs used to control ovulation were found to have a number of undesirable, and for some women dangerous, side effects. These were well publicized in a series of U.S. Senate hearings, stimulating controversy between groups that usually are on the same side. Family planning advocates objected to the hearings, which apparently had a negative effect on acceptance of the drug, arguing that pregnancy was a great deal more dangerous than the relatively rare side effects of the pill. Drug safety proponents countered, pointing out that pregnancy was not the only alternative to using the pill, and urged accelerated research to develop safer contraceptive devices that would be equally convenient. The upshot of the controversy was the inclusion of a warning of possible side effects of oral contraceptives to be included in each prescription, leaving the question of safety up to the individual.

Constraints on individual freedom that result because society has not yet developed options, procedures or devices which permit the individual to achieve the results he desires, pose an interesting issue. Clearly, individual voluntarism is precluded if there is no way in which the choices can be made on a decentralized, individual basis. The case is well put by Pilpel: The absence of a readily available, effective contraceptive technology, and adequate information about it, prevents society and its individual members from approaching population control on a voluntaristic basis.

On the other hand, it could be argued that voluntarism can never be given a chance in the sense that all restraints, both explicit and implicit, on the free exercise of individual choice in childbearing would be removed. There will always be forces, economic, social and legal, which influence prospective parents in one direction or the other.

A QUESTION OF EMPHASIS

The question then comes down to a choice of emphasis in removing restraints from parental choice: Should first priority be given to extending contraceptive technology and removing legal restraints on its use, as Pilpel argues, or should extending information about the pros and cons of contraception receive equal attention? It is obvious that when a new contraceptive is developed, information about it and its performance must be made public if that device is to constitute a real alternative to the potential user. However, should not the information also be available on the consequences of failing to use that device or some other contraceptive technique? Full population "literacy", it can be argued, must exist in any society which pursues voluntary family planning. In that case, there is evidence that the United States is a long way from being able to support a voluntaristic approach. This evidence, which has been developed through recently conducted surveys, admittedly of limited scope, documents widespread misunderstanding of population dynamics in the United States. If this is so, and individuals cannot accurately associate the future social consequences of procreative choices they may make on an individual basis, then they can hardly be said to understand all of the alternatives available to them—including the alternative of using no protection against pregnancy.

All of this suggests that the demarcation between voluntary and non-voluntary means of birth control is blurred. Nevertheless, it is possible to make a case for non-coercive means of effectively limiting population growth in the United States. The basic argument is simple—coercion inevitably engenders hostility and resistance, which tend to grow in a cumulative fashion over time. Eventually, some threshold is passed and resistance is sufficient to interrupt, and possibly frustrate, the measures being pursued. In short, coercion is not a dependable method, and non-coercive approaches can be preferred in terms of their relative efficacy.

Accepting a somewhat blurred line between coercion and voluntarism, and acknowledging that the technological and informational conditions required for full voluntarism are unlikely to be met, how do we proceed from where we are? What are the criteria that can help us convert a growing public concern with population growth into programs and processes which respect individual freedom and acknowledge the advantage of decentralized decisions?

Perhaps the most important factor which would make possible voluntary reduction of population growth would be a habit of thought which recognizes the future social consequences of individual procreative behavior. This is not an area of thought and speculation to which we are accustomed. Individuals may have planned their families intelligently and accurately, but there is not yet clear recognition of the relation between individual behavior and demographic change. Until such a habit of thinking about population is acquired, there will be a tendency to consider demographic phenomena as situations unto themselves, separate and apart from the social conditions within which they occur and to which they contribute.

POPULATION EDUCATION

This is an objective that can be achieved only by the profoundest type of education in population affairs: an education whose domain is not only the provision of accurate, scientific information regarding birth control possibilities, but which also instills in each individual an acknowledged responsibility to think about the population component of social situations. At the present time, population education in the United States is in its infancy, although those involved in it are extremely active.

Population education efforts should be aimed primarily at the schools. But public discussion of the facts of population growth, of the various proposals and programs that might be employed to reduce fertility, and of the economic effects implied by lower growth rates, is no less important. Public enthusiasm with population education is increasing, but public opinion also is notoriously erratic, often losing interest only a short time after enthusiastically embracing an idea. If population is to be a permanent subject of education, it is necessary during the period of acceptance to establish arrangements which will continue to have influence over a longer period of time.

Another front on which action can be taken refers to the number of institutions and public policies which implicitly favor families of particular size. A good deal of discussion has focused upon the extent to which the social and economic fabric of American society contains pronatalist sanctions. In addition to income tax deductions and free public education, there are implicit sanctions, such as a common terminology which refers to childlessness with disparaging implications, and social norms which deprive women of social roles other than that of wife and mother. To what extent do these constitute coercive measures? They clearly have received social approval and broad compliance in the past, and perhaps we view freedom as opportunity by the individual to select from among alternatives against this kind of social norm or base-line. This is more than a matter of semantics; it comes to the very heart of the issue of individual coercion.

One can distinguish between invoking new measures that modify the socially approved incentive system from those that invoke prohibitions on one's range of choice. While the line between them may at times be blurred—for example, the costs of certain options may be beyond the capacity of the particular individual to bear, and thus his range of choice is narrowed—they are discernibly different types of measures.

What is the critical element that makes a change in society's rules compulsory? It could be the abruptness with which the decision is made, or the legal and political jurisdictions under which it claims authenticity and authority, or perhaps both. The point remains that usually it is possible to differentiate between overt coercion, which substantially reduces the options which an individual can choose, and pressures which modify the terms of choice. Overt coercion is not only questionable from a practical standpoint—because of resistance which can be counted on to develop—but also on ethical grounds.

Historical failure has largely discredited two traditional ends which have been used to validate coercion—the aim of preparing for a coming social revolution, or the aim of preserving the state. The result has been an abhorrence of any measures that seriously impinge upon an individual's freedom. On the other hand, the technological, organizational and demographic conditions of human existence change, sometimes jeopardizing society unless its social ground rules are modified. This is, indeed, the basic premise of democracy, and it was the anticipation of precisely this process of adjustment over time which occasioned the meticulous debate and craftsmanship reflected in and required by American constitutional governance.

READINGS IN POPULATION

Davis, Wayne H. *Readings in Human Population Ecology*, Englewood Cliffs, New Jersey Prentice-Hall, Inc., 1971. 259 pp. $7.95. Thirty-one papers by noted demographers and social scientists selected to present a wide and balanced discussion of controversial population questions.

Detwyler, Thomas R. *Man's Impact on Environment*. New York: McGraw-Hill Book Co., 1971. 731 pp. $5.95. In textbook format, 52 environmental scholars examine man's biological impact on the world's ecological balance in such problem areas as air and water pollution, soil erosion, destruction of plant and wildlife. Includes a glossary of environmental terms.

Field, Frederick V., General Editor. *An Economic Survey of the Pacific Area: Population and Land Utilization, Part I*. Karl J. Pelzer, New York: Russell and Russell, 1971. 215 pp. Price Not Stated. One of a group of monographs which seeks to update and collate data from the 1934 study of the Institute of Pacific Relations entitled *Economic Handbook of the Pacific Area*. The reissue treats population dynamics in addition to environmental problems, internal and international trade, transportation, commodity production and the effects of industrialization on the area.

Harrison, Gordon. *Earthkeeping.* Boston: Houghton Mifflin Co., 1971. 276 pp. $5.95. This book blames environmental decay on economic political and value systems rather than on such factors as population and technology and concludes with a cautiously optimistic note for the future.

Harte, John and Robert H. Socolow, Eds. *Patient Earth.* New York: Holt, Rinehart and Winston, Inc., 1971. 364 pp. $7.95. Thirteen essays by concerned demographers, environmentalists and economic and resource specialists present an action-oriented, case-history approach to the solution of U.S. problems in urban blight, population control, resource management, ecological effects of military programs and alternative land uses.

Hindell, Keith and Madeleine Simms. *Abortion Law Reformed.* New York: Humanities Press, 1971. 269 pp. $10.00. A documented history of the thirty-year movement to repeal Britain's 100-year-old abortion law, and an evaluation of the problems and abuses of the liberalized law.

Keyfitz, Nathan and Wilhelm Flieger. *Population: Facts and Methods of Demography.* San Francisco: W. H. Freeman and Co., 1971. 613 pp. $13.50. A volume of recent statistical tables and computer printouts, with mathematical models used to examine observed and projected populations, age structure, vital rates, age-specific death rates, life tables, and fertility measures as gathered by statistical agencies in 70 countries throughout the world.

Meijer, M. J. *Marriage Law and Policy in the Chinese People's Republic.* New York: Oxford University Press on behalf of Hong Kong University Press, 1971. 269 pp. $16.75. A historical review of traditional family values tracing changes in official attitudes in the twentieth century, and contrasting National Government marriage legislation with the application of the 1950 Communist Marriage Law as an instrument for social change.

Nagi, Mostafa H. *Labor Force and Employment in Egypt: A Demographic and Socioeconomic Analysis.* New York: Praeger Publishers, 1971. 285 pp. $16.50. A study of the impact of population trends since World War II on the size and composition of the labor force in Egypt, with suggestions for techniques to measure unemployment and underemployment in developing countries.

National Academy of Sciences, Study Committee of the Office of the Foreign Secretary. *Rapid Population Growth: Consequences and Policy Implications.* Baltimore: The Johns Hopkins Press, 1971. 696 pp. $20.00. A two-part study offering an analysis of population growth and related problems with recommendations for effective population control through voluntary means, followed by seventeen technical papers on the social, educational, political and environmental aspects of population dynamics.

Pohlman, Edward. *How to Kill Population.* Philadelphia: The Westminster Press, 1971. 169 pp. $2.65. An overview of some of the major ways being considered today to end the population problem, including economic incentives and psychological motivation, taking social and cultural values into account.

Ryder, Norman B. and Charles F. Westoff. *Reproduction in the United States, 1965.* Princeton University Press, 1971. 419 pp. $13.50. Report of findings from the third National Fertility Study of 5,600 married women under age 55. Subjects surveyed include wanted and unwanted births, contraceptive use and effectiveness, abortion and subfecundity in relation to socioeconomic, religious and racial fertility differences.

Schwartz, Eugene S. *Overskill.* Chicago: Quadrangle Books, 1971. 338 pp. $8.95. The book argues against the thesis that science and technology are the panaceas for man's human and environmental dilemmas, and suggests that many problems arise and intensify with technological advance.

SOUTH CAROLINA FARM FAMILY OF THE YEAR 1971

Mr. THURMOND. Mr. President, the Charles A. Copeland family of Gaffney, S.C., has recently been honored as South Carolina's Farm Family of the Year 1971. This award is given annually by the Farmers Home Administration. It is truly a "family affair" as judges consider the interests and activities of all members of the family.

The Copelands bought their farm in 1955 when it consisted of 200 acres and a farmhouse. Today the farm has been enlarged to 505 acres and the house reflects the great improvements and personal care invested in it by this outstanding family.

On March 15 of this year, my wife, accompanied by Mrs. Julie Eisenhower, visited the Copelands, and they were highly impressed with the farm and with the obvious motivation of this family.

Mr. President, a feature story about the Copelands was published in The State newspaper, of Columbia, S.C., on March 12, 1972. The story, written by Miss Linda Caughman, a State staff writer, gives a detailed account of the family's accomplishments. 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:

ENTIRE FAMILY HONORED BY FARM AWARD

(By Linda Caughman)

GAFFNEY.—A brand new sign hangs from the lamp post in front of the Charles A. Copelands' spacious two-story white farm house.

"South Carolina Farm Family of Year 1971"—the sign proclaims to passersby.

Mr. and Mrs. Copeland and their three children were recently named the state's Farm Family of the Year by the Farmers Home Administration. After they found out Dec. 2 that their family had been chosen for the award, the Copelands had the sign made and erected but kept it covered until the recognition was made public Jan. 13.

The Copelands have a 19-year-old daughter, Carroll, a Winthrop College freshman; a 17-year-old son, Mitch, a senior this year at Gaffney High School; and a 15-year-old son, Alex, who is in the ninth grade at East Junior High School.

The family's dog, Bandit, has been dubbed "Farm Dog of the Year" by Alex.

According to Mrs. Copeland, the judges "looked at the whole family." The children's accomplishments in the 4-H Club and other organizations connected with farm life probably helped convince the judges that the Copeland's farm is a "family affair," as Mr. Copeland described it.

A closed-in back porch has its walls covered with family pictures, certificates, awards and memorabilia of the family's life on the farm. The center hall is a gallery with pictures ranging from ancestors' portraits to recent photographs of the "Farm Family of the Year."

Carroll, who was active in 4-H Club for seven years, had a Grand Champion at the Blue Ridge Stock Show in Spartanburg in 1966 and a reserve champion in 1967 and 1968. According to her father, she was the youngest person at 12 years old and the first from Cherokee County to ever have a Grand Champion. Carroll was also a member of the Junior Angus Association.

Cows are not the only animals Carroll enjoys. Mr. Copeland said that his daughter "used to ride before she could walk." The 19-year-old has a Tennessee Walking Horse named Judy. Her interest in animals continues as she is majoring in biology at college.

The Copelands' older son Mitch hasn't made up his mind yet about what he plans to major in next year at Clemson University, but he is thinking about agricultural or textile engineering.

Active in 4-H Club for six years, Mitch started growing his own crop three years ago. "The judges couldn't believe that Mitch had been renting land and getting price support checks directly from the government," his proud father said.

Recently Mitch and his father finished a second story room so that Mitch could have his own bedroom. Mitch bought bedroom furniture with money he earned from his crops.

Alex, a 4-H Club member for four years, is now learning to drive a tractor and will have his own crop for the first time this year. According to the younger brother, one of the best things about living in the country is that "you don't have to go riding around trying to find a place to hunt."

Mr. and Mrs. Copeland, who grew up as neighbors in town, agreed that they "wouldn't move back into town for anything."

The couple related how a city-reared pair took the unlikely course of moving to a farm. Mr. Copeland attended Clemson University for three years, majoring in industrial education, until "the Army caught the whole class." After receiving a purple heart during World War II, he returned to Gaffney and went in business with his father in a farm supply store.

"I kept a few cows. Then a friend asked me if I would be interested in going into partnership with him in registered Hereford cattle. So we stayed there over four years until we found this farm for sale," Mr. Copeland said.

The farm which the Copelands bought in 1955 consisted of 200 acres with a two-story house built in 1923. The house, although well built, was just a shell. "It took all winter to fix it. The house didn't have any plumbing except a cold water faucet in the kitchen. The bathroom had no fixtures. We had to put in ceilings. The kitchen was the pantry, and the den was the kitchen. In the 12 rooms there were only one or two electrical receptacles. The walls had never been painted," Mr. Copeland said.

Since 1955, the Copelands have enlarged their farm to 505 acres with 300 acres in cultivation, 70 in pasture and 100 in improved woods for timber. They now own 3 ponds and 70 head of livestock. Their crops last year were 97 acres of cotton, 40 acres of soybeans, 72 acres of wheat, oats, and barley and 10 acres of corn.

The farmer was the first and only person in Cherokee County in 1957 to officially raise over 100 bushels of corn per acre with 133 bushels of corn.

"I've had the first cotton bloom and the first open boll in the county every year since 1966," Mr. Copeland said.

The Copelands also have a vegetable garden, which provides more than the family needs. "We freeze a good bit of meat, vegetables and fruits," Mrs. Copeland said.

This farmer's wife is far from being the typical farmer's wife of the olden days. Mrs. Copeland, who was graduated from Limestone College and received a masters degree from Converse College, is head of the science department at East Junior High in Gaffney.

Smiling at the common misconception that farmers' wives help with the plowing and other heavy farm chores, Mrs. Copeland said, "I usually do all the washing and cleaning up on Saturday. I do a lot of sewing, but I usually do that at night."

The Copelands could think of only one drawback to living on a farm. "You have to use a lot more gas," Mrs. Copeland said.

"We just take advantage of it and don't let farming take advantage of us. First we try to keep up. Another way is we use big machinery," said Mr. Copeland, recalling that the first year they plowed cotton with a mule.

"We're hoping to win the national award, but it will take some doing," Mrs. Copeland added.

OUR CITIES

Mr. TAFT. Mr. President, many of our cities have become so large that people feel remote and cut off from their Government. People in various neighborhoods feel that they do not have the power to control the quality of life in those neighborhoods.

On January 19, 1972, I addressed the Senate on some of the problems affecting our cities. In that speech I suggested that we should question whether or not some of our cities are too large to be properly administered. I noted the decentralization of Greater London, and suggested that through this device the Government can be more responsive to neighborhood needs than large municipal governments, such as New York and Los Angeles.

If our neighborhoods are to develop the capacity for self-renewal in our larger cities, we should have neighborhood control over parks, zoning, recreation programs and other municipal functions which can be administered on a neighborhood basis.

The New York Times of March 23, 1972, contains an article entitled, "London Finds That Decentralization Works," by Bernard Weintraub. 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:

LONDON FINDS THAT DECENTRALIZATION WORKS

(By Bernard Weintraub)

LONDON.—Seven years ago, the 2,000-year-old City of London decentralized its government and divided itself—in a spurt of quiet but radical change—into 33 separate "Londons."

The far-reaching program reorganized a sprawling city of 90 local authorities and overlapping county councils, county borough councils and urban and rural district councils.

Now, a New York State commission's report recommends a government overhaul of New York City and cites the system in London as an example of how decentralization can work. London was decentralized into 33 borough councils, whose powers range from control of child welfare and health services to pollution control, street cleaning and garbage collection. Working beside the London boroughs is the Greater London Council, over-all planning authority for the city.

"Most of London's government is in the hands of the boroughs," said A. G. Dawtry, the town clerk and chief executive of Westminster, the wealthiest borough in the city. "We've made London as local as we can."

A STRATEGIC AUTHORITY

A. W. Petersen, director general of the Greater London Council, said:

"The value of this system is that there does exist a strategic authority to look at the planning of the entire city. At the same time there are the boroughs who are able to deal with personal services because they are, quite simply, closer to the people. Oh, there are some areas of conflict between the boroughs and the Greater London Council, but it all seems to work remarkably well."

Although overlapping and confusion remain, the decentralization of London has worked relatively smoothly. The 610-square mile city, with a population of 7.5 million, is cleaner, calmer and safer than most large cities in the world.

"The system we have has a certain duality of control," said John P. Miliffe, a senior planner at the Greater London Council. "There are some fuzzy, uncertain areas where powers are divided between the boroughs and the central council. But it all seems to work because there's an element of compromise, settling things out, that's peculiarly English. I'm not sure it wouldn't work as well anywhere else."

NO "MAYOR" OF LONDON

Under the current setup, which was drawn up in the London Government Act in 1963, the Greater London Council manages and runs the city like a regional government. Administering the city is not left in the hands of a single man, like Mayor Lindsay, but to 116 unpaid councillors, of whom 100 are elected every three years. The remaining 16 are appointed by the Conservative and Labor parties. The Council now has 76 Tory and 40 Labor members.

As the over-all planning body for the city, many duties of the Council are sharply defined. It is responsible for the highways and main roads in London, the court and judicial services, transportation, and fire and ambulance services.

The local boroughs, who also hold elections every three years to elect borough councillors, are responsible for health centers and clinics, consumer protection including food and drugs, working conditions in shops and offices, street cleaning, libraries and swimming pools.

There are, however, several key areas of "shared responsibility" that have resulted in confusion and disagreement.

The Council is responsible for the 570 miles of metropolitan roads, while the boroughs oversee the 7,100 miles of local roads. Disagreements constantly arise over where local roads end and main roads begin.

SPLIT SCHOOL AUTHORITY

The boroughs are responsible for refuse collection, while the Council is responsible for its disposal.

Education in the Central London area is under the aegis of the Inner London Education Authority, a special committee of the Council. On the other hand, the 20 outer London Borough councils are responsible for education in their area.

The boroughs are the prime housing authorities. They built a total of 23,142 dwellings last year, compared with the Council's 4,984 apartments. Within the delicate housing area, there may, however, be uncertainty and disagreement.

"London boroughs are autonomous in their own right, but the G.L.C. has strategic powers and can declare a site a comprehensive development area," said Henri James, the London-born spokesman for the Greater London Council. "There may be fundamental differences because the local borough may not want the construction there."

Mr. Jaume and several other officials said that an incident could develop in London similar to the recent dispute in Forest Hills, Queens, where middle-income residents angrily opposed a low-income project. It could especially arise in suburban boroughs such as Bromley or Croydon where the council is considering new housing, and residents have made clear that they are against it.

THE LONDON METHOD

Unlike the case in New York City, such a dispute is ironed out in a single way. An independent inquiry is set up, with all sides stating their case. Then a final decision is made by a Government Cabinet minister, the Secretary of State for the Environment, now Peter Walker, who oversees transport and local development.

"If the boroughs and the G.L.C. cannot resolve their conflict on the political level, then it's resolved by the central government," said Mr. Dawrty, the Westminster chief executive who extensively briefed Governor Rockefeller and Mayor Lindsay when the two made separate visits to London last year.

"The relationship between the central and local government is far closer here than in New York and there doesn't seem to be that city, state and Federal Government overlap," he went on. "In the matter of welfare, for example, and the payment of money to poor families, this is strictly a national responsibility, not a local one. We don't have that kind of financial problem in London."

The powers of London's boroughs is underlined by the number of employes working for them (230,000 compared with the council's 36,000) as well as their broad ability to levy taxes. London's taxes are based on rates or property assessment.

SUPPORTING THE COUNCIL

"The money needed by local authorities is raised by this tax," said Mr. Jaume. "In areas such as Westminster your rates would probably be double what they would be for an equivalent flat or house in outer London."

Together with local expenses, the boroughs also support the council, which makes an annual "precept," or demand, for funds. The council now spends annually the equivalent of about $1.04-billion. The boroughs spend the equivalent of $2.288-billion a year.

In addition, the five wealthiest London boroughs—Westminster, Kensington and Chelsea, Camden, the City of London (the business quarter) and Ealing—grant the equivalent of $44.2-million to the poorer boroughs.

"It's a rob-the-rich, pay-the-poor scheme," said Lou Sherman, a London taxi driver who is chairman of the London Boroughs Association.

He added: "The kind of formula and the system we've worked out is fraught with problems. The boroughs in Inner London, for example, are opposed to the new motorways that the K.L.C. wants to build. The outer boroughs, the conservative ones, are not quite so interested in new housing. There are frictions, but they're settled."

Each borough, which generally has a population between 220,000 and 250,000, elects 70 unpaid councilmen. Usually they meet as a unit one evening every six weeks. On other evenings they serve on committees dealing with health, social services, refuse collections and other borough responsibility.

"The citizen in each borough feels a very close link to what's going on and feels that he's in some control," said Mr. Dawtry. "This large number of councilmen, 70, represents wards and does casework. If a citizen has a grievance, he can talk to the councilman or go to City Hall, where the decisions are made. It's not quite like that in New York."

Another key difference was outlined by Ronald Stillwell the deputy executive of Kensington and Chelsea. "New York's elected representatives tend to get more involved in administration, the day-to-day job," he observed. "We take the view that elected representatives are there to determine policy. Having decided the policy, they turn it over to the administration to implement it. In other words, you don't keep a dog and bark.

"Here the administration doesn't come and go with the party in power. Things remain the same here."

PRINCE BERNHARD ON MAN AND THE NATURAL WORLD

Mr. MATHIAS. Mr. President, the Prince of the Netherlands, whose white boutonniere, became a symbol of resistance to Nazi oppression, has always been a man able to recognize a danger and willing to sound the call to arms against it. Prince Bernhard has now called our attention to a danger far from both his shores and ours, but a danger in which we share a common interest; the danger to the natural world. The rapid reduction of wild Africa to civilization is creating changes in nature that cannot be accepted complacently by concerned men anywhere. But he has stated the case eloquently himself. I ask unanimous consent to have printed in the RECORD Prince Bernhard's remarks in Morges, Switzerland, as reported in last Sunday's New York Times.

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

MAN AND THE NATURAL WORLD

(By Prince Bernhard)

MORGES, SWITZERLAND.—Our world today stands in grave danger of losing many animals and plants which have given joy to countless generations. They need not be lost if we manage our affairs properly, for it is man's own interest to see that the natural world, which is the root of his own existence, survives for his children and their successors.

My eyes were opened over three visits to the Lake Manyara area of Tanzania. On our first visit to this beautiful area we were surrounded by thousands of antelope, zebra, wildebeest, and many other species. The next year there were noticeably fewer, and on our third visit they had become so few that we could easily count them. Seeing this decline, and the development of agriculture around Lake Manyara, made me realize how rapidly man was destroying something that I felt must be preserved. Meeting this challenge has become one of my principal preoccupations, and it is why I am proud to be president of the World Wildlife Fund.

The fund is only 10 years old, but we feel that we have already made our mark helping to save both living species and the wilderness areas which are their home, and which are so threatened by man's population explosion and the technological revolution. To the end of 1971 the World Wildlife Fund had contributed $7.3 million to 550 projects in 60 countries. This effort stimulated governments and authorities to contribute an equal amount to this great task.

The prestige achieved by the World Wildlife Fund has enabled it to use its influence to promote the launching of national conservation programs in several countries, and to inspire second thoughts about development proposals which could have endangered wild nature and would often have been of less economic benefit in the long run.

We believe we have improved the prospects for survival of critically endangered species such as the orangutan, the Arabian oryx, the Javan rhinoceros, the Hawaiian goose, the aye-aye, the white-winged wood duck, Morelet's crocodile, and the marine turtles, to mention a few.

Natural areas have been purchased and rented, or the authorities persuaded to protect them all over the world. In the United States the rich New Jersey wetlands have been purchased so that they will remain a haven for bird and water life, and provide a satisfying and restoring glimpse of wild nature for our urban humans. Just recently the World Wildlife Fund contributed $190,000 toward the purchase by the French Government of land in the Camargue, the Mediterranean delta of the Rhone, which will be preserved as one of Europe's richest nature reserves.

The famous national parks of Kenya, Tanzania, Uganda, Congo, Zambia and Ethiopia have received grants, and we have supported eight projects in Madagascar, which is a unique biological area with distinctive plant and animal life. Cousin Island in the Seychelles has been purchased to save its rich bird life.

This is just the briefest of glances at some of the things we have done.

"So what?" you might say. "Does this mean anything in terms of human existence?"

We believe it has a great deal to do with human beings.

The life we know today evolved over millennia through the complex interplay of natural forces. They form a web, some obviously supporting others—others not so obviously doing so. Man has been able to control much of nature and other life, but he has not risen above dependence on them. Crops and domestic animals, and many of our medicines, are direct products of the natural world.

I personally believe we have only scratched the surface in finding natural medicines. Even products like petroleum, which we now see as much as a threat as a blessing, come from natural processes. Oxygen comes from photosynthesis in the seas and plants. Soil is enriched by natural waste as it recycles it. Plants feed the animals we eat.

The species and land the World Wildlife Fund has saved are perhaps insignificant strands. But there is nothing insignificant about the fact that over 900 species of animals and 20,000 plants are in danger of extinction. This is the time to be concerned—man is in danger of losing vital supports for his own life.

We have chosen the natural world as our special sphere of activity, but we give our support to those tackling other environmental problems, of which the human population explosion is the real root. The World Wildlife Fund has directly called on all heads of government to stabilize their populations as soon as possible. Within this century—only 30 years to go—today's four billion people will become six billion, with all the consequences of pressure on land for food and other resources. Either we bring this under control or there will be disaster—almost certainly within the lifetime of our children and grandchildren.

ADJUSTMENT ASSISTANCE

Mr. JAVITS. Mr. President, I have been increasingly concerned about the gross inadequacy of the adjustment assistance programs of the U.S. Government. The high promise of the Trade Expansion Act as regards adjustment assistance programs has never been fulfilled; in fact, the record to date could lead to the judgment that this promise has been betrayed.

A very small amount of money has been authorized for adjustment assistance programs over the past 10 years; and in reviewing this sorrowful record, I accept as just the contention of the labor movement that today's concept and approach to adjustment assistance results in this being "burial assistance"—which in most cases arrives years after the funeral. A priority item on the agenda of the administration and of Congress must be the strengthening and reform of these adjustment assistance programs.

Toward promoting this end, I wrote to the Secretary of Commerce and the Secretary of Labor on February 22 and February 24 asking specific questions concerning the adequacy of the laws that at present govern the granting of adjustment assistance and the record of administration of these programs. I have now received replies from both Secretary Hodgson and Secretary Peterson. I ask unanimous consent that my letter to these members of the Cabinet and their replies be printed in the RECORD at this point along with their replies.

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

U.S. SENATE,
Washington, D.C., February 22, 1972.

Hon. JAMES HODGSON,
Secretary of Labor,
Washington, D.C.

DEAR MR. SECRETARY: I am sorry that the press of floor business did not allow me to hear all of your testimony before the Joint Economic Committee on February 17. As you know, I asked for and received unanimous consent of the Committee to insert questions and answers into the record. I would appreciate your response to the following questions.

As you know, the Congress and the country have been very much disappointed by the programs of adjustment assistance carried out by this Administration and previous administrations. I have the following questions in this regard:

(1) Are there any inadequacies in existing law which deter an effective program of adjustment assistance? For example, is the law that requires the Secretary of Commerce and the Secretary of Labor to certify eligibility to apply for adjustment assistance after there already has been a Tariff Commission and/or Presidential determination of injury an anachronism which serves no useful purpose? Are there other examples of inadequacies of law which should be corrected?

(2) What is the time lapse between the application of firms or workers for eligibility to apply for adjustment assistance and the granting of such eligibility? For example, a constituent firm has indicated to me that after a 3–1 Tariff Commission vote in their favor, it took two months merely to receive certification that they were eligible to apply. How many cases are like this where bureaucratic delays prevent a meaningful and prompt program of adjustment assistance?

(3) Of the firms and workers which have applied for certification of eligibility, how many have received such certification?

(4) Of those receiving certification of eligibility to apply, how many received adjustment assistance? And of those receiving adjustment assistance, what was the time period between their application for eligibility and the granting of adjustment assistance?

(5) Could you also inform the Committee of the nature, scale and level of adjustment assistance over the past five fiscal years on an FY year by FY year basis?

Finally, it is my understanding that an Inter-Departmental Task Force under the leadership of Undersecretary Silverman has just completed a major study on adjustment assistance. My question is whether this study with the option it puts forward will be made available to the Congress? Also whether and

when the Administration will come forward with legislative recommendations based on this study?

With best wishes,

Sincerely,

JACOB K. JAVITS.

U.S. DEPARTMENT OF COMMERCE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 27, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR JACK: This is in response to your letter of February 24, 1972, concerning the trade adjustment assistance program. I understand a similar letter has been sent to the Secretary of Labor and that he is communicating with you directly regarding the adjustment assistance program as it relates to workers. In it you asked several specific questions, and I have tried to answer each of them in this letter.

Your first question pertains to possible inadequacies in the current provisions of the Trade Expansion Act (TEA) that apply to trade adjustment assistance. In my view this question gets at the heart of problems that have been encountered with this program. As you point out, the entire program is under review both on an interagency and intra-departmental basis. Before this review is complete I hesitate to make piecemeal recommendations on possible changes in the statute. However, it is my personal feeling that there are some major deficiencies in the law. For example:

(a) Injury criteria are too stringent, especially the criterion limiting the availability of assistance to those cases in which injury has already occurred and in which the injury is a result "in major part" of prior trade concessions.

(b) The TEA does not provide for methods of response to import problems that would constitute a genuine adjustment assistance program for *an industry as a whole apart* from escape-clause relief.

In addition, as I pointed out in my report "The United States in a Changing World Economy," the adjustment process takes time even when accelerated by a good program of assistance. Recently some economic changes associated with increased imports have occurred very fast. When increasing imports have the potential to bring change faster than the adjustment system can cope with it—and thus to bring hardship—some have suggested that temporary orderly marketing mechanisms should be available. I believe we should explore the possibility of developing criteria for invoking such mechanisms, and see how these criteria can be internationalized so that such *temporary* protection could be available in all countries on an equitable basis.

You also asked whether the TEA provision requiring a Commerce certification of eligibility after the Tariff Commission or the President has already made such a determination is "an anachronism that serves no useful purpose." There are two situations in the certification process that relate to your question.

First, there is no finding of injury or threat of injury to any particular *firm* in cases where the Tariff Commission finds injury with respect to an *industry* and the President authorizes firms within the industry to request certification of eligibility to apply for adjustment assistance. Accordingly, the Department of Commerce must make a thorough investigation of the facts pertinent to each applicant firm, before determining whether the firm is eligible to apply for adjustment assistance.

A second situation is one in which the certification of eligibility to apply follows a Tariff Commission determination of injury upon petition of a particular firm. It can be argued with some justification in this situation that the Department's certification of eligibility to apply is largely pro forma. We have recognized this. On February 18, we published in the Federal Register proposed new regulations for the adjustment assistance program, a copy of which is enclosed. Section 500.23 of these proposed regulations is specifically designed to facilitate prompt certification of eligibility for individual firms that have already been the subject of an affirmative injury finding by the Tariff Commission. You will note that the extent of our review in such cases is limited to obtaining adequate assurances that no material facts were omitted from the firm's presentation before the Tariff Commission and that there has been no significant change in economic circumstances affecting the firm since that time. Of course, the statutory requirement of the TEA must be satisfied before we are justified in spending government monies on adjustment assistance. Again, my personal view is that a strong case can be made for changing the concept and approach to adjustment assistance from one of adjudication to one of program management by an Executive Department. Under the program management approach, the particular agency involved would administer adjustment assistance from beginning to end. This would permit us to get a much faster jump on the problems.

Your second question relates to the time taken to process cases. As I pointed out, the time lapse between application by a firm for eligibility to apply for adjustment assistance and the certification of such eligibility depends on whether the case stems from an injury determination with respect to the particular firm or with respect to the whole industry. In an individual firm case, an application to this Department for certification of eligibility to apply will be processed promptly, generally within 20 days. We have had one case, however, where certification was delayed until allegations of impropriety with respect to the Tariff Commission proceedings could be reviewed by the Department of Justice.

In cases where the Tariff Commission has made an injury finding as to the whole industry, the time involved is much longer. In these cases, apart from the fact that recourse to adjustment assistance is contingent upon an intervening decision by the President that such form of relief shall be available, the findings of the Commission with respect to the industry are not necessarily illustrative of the situation with respect to a particular firm. We must, therefore, determine whether the firm has been injured by the imports which the Tariff Commission found were injuring the industry. The length of time required for such an investigation depends on many factors, including the size of the firm, the diversity of its product line, the adequacy of its record keeping and the adequacy of the data submitted by the firm to the Department. One such investigation took as long as ten months, while another was completed within two months. Most cases more closely approximate the latter than the former in the amount of time spent on the investigation. As you know, although the trade adjustment assistance program was established in 1962, our experience with processing adjustment assistance cases only began in 1970, following the first affirmative finding by the Tariff Commission. We are now at the point where each case no longer involves entirely new policy considerations and I expect the time lapse between receipt of an application for certification of eligibility to apply and the granting of assistance to be even further reduced as we gain more experience.

With respect to your request for information on the total number of firms certified as eligible to apply for adjustment assistance, 20 firms have applied to date for certification of eligibility. Of these 20 firms, 18 have been certified eligible; one has been denied certification and one application is currently pending.

As to the data requested concerning recipients of adjustment assistance to date, please see the attached table. The time period between certification of eligibility to apply and certification of the firm's adjustment assistance proposal is set forth on this table as well.

You have requested information on the nature, scale and level of adjustment assistance over the past five fiscal years. For the reason explained above, no adjustment assistance was provided until Fiscal Year 1971, when two proposals were certified and financial assistance provided through the Small Business Administration. In Fiscal Year 1972, to date, we have committed $4,672,000 in financial assistance from our own appropriation. With respect to technical assistance, we committed $195,611 in Fiscal Year 1971 and $138,000 so far in Fiscal Year 1972. Total tax assistance certified to date (all in Fiscal Year 1972) amounted to $390,000.

Finally, you asked about the study undertaken by an interagency task force on adjustment assistance. As you know, this task force was established by the Council on International Economic Policy to develop recommendations for a more comprehensive and effective adjustment assistance program. It is still in draft form and has not yet been submitted to the Council. Accordingly, I cannot specifically respond to your inquiry as to the content and timing of possible legislative recommendations until the Council has had an opportunity to consider the findings and conclusions of the task force. The decision whether to make this report available to the Congress will presumably be made by the Council after it has completed its review.

I hope I have answered your questions. In closing, let me say that I believe there is much we can do to broaden both the concept and delivery of trade adjustment assistance. For example, we are now moving ahead in the Commerce Department to give close and expedited attention to the following possibilities:

(a) An early action mechanism designed to spot potential import-impact problems and to help industries and firms take prompt and responsive steps before a critical point of economic detriment is reached.

(b) Techniques and forms of assistance that could be made available on an industry-wide basis (e.g., funding for R&D projects of general application to the industry). This approach, in my view, would provide a broader-gauged response to adjustment assistance problems than that of dealing primarily with individual firm cases, as has been the approach to date under the TEA.

(c) Some form of adjustment assistance to communities economically dependent upon firms that are heavily impacted by import competition.

I appreciate your interest in the trade adjustment assistance program and intend to give it considerable attention in the coming months. Should you or your staff have further questions or useful information about adjustment assistance, please get in touch with me. I hope to continue to strengthen the program, and look forward to working with you toward that end.

Sincerely,

———,
Secretary of Commerce.

Company	Industry	Amount of assistance	Certification of eligibility	Proposal submitted	Proposal certified	Assistance provided
Emil J. Paidar Co., Chicago, Ill	Barber chairs	$2,500,000	July 20, 1971	July 29, 1970	Aug. 20, 1970	Sept. 20, 1970
Benson Shoe Co., Lynn, Mass	Nonrubber footwear	1,700,000	July 21, 1970	Oct. 7, 1970	Nov. 19, 1970	Jan. 7, 1971
Louis Shoe Co., Amesbury, Mass	do	747,000	May 4, 1971	Sept. 8, 1971	Oct. 19, 1971	[1] Jan. 20, 1972
ASG Industries, Kingsport, Tenn	Sheet glass	4,000,000	Sept. 22, 1970	June 4, 1971	Dec. 7, 1971	
The Arista Co., Winston-Salem, N.C	Textiles/data processing	160,000	Dec. 28, 1971	Feb. 2, 1971	Jan. 11, 1972	
H. H. Scott, Inc., Maynard, Mass	Consumer electronics	230,000	Mar. 18, 1971	Sept. 21, 1971	Dec. 23, 1971	
Estey Piano Corp., Union, N.J	Piano	[2] 100,000	June 5, 1970	February 1971	Mar. 4, 1971	
Bel-Tronics Corp., Addison, Ill	Electronic components	712,000	June 17, 1971	Oct. 25, 1971	Mar. 3, 1972	

[1] 2d disbursement.

[2] Approximate amount of technical assistance provided to date. Final amount of other assistance not yet determined.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 20, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate
Washington, D.C.

DEAR SENATOR JAVITS: I am happy to respond to the questions in your letter of February 22. My answers are enclosed. I agree that this material should be incorporated into my JEC testimony.

Sincerely,

J. D. HODGSON,
Secretary of Labor.

ANSWERS

(1) Are there any inadequacies in existing law which deter an effective program of adjustment assistance? For example, is the law that requires the Secretary of Commerce and the Secretary of Labor to certify eligibility to apply for adjustment assistance after there already has been a tariff Commission and/or Presidential determination of injury an anachronism which serves no useful purpose? Are there other examples of inadequacies of law which should be corrected?

In answering this and the subsequent questions, I shall confine my remarks to the worker side of the Trade Adjustment Assistance Program. I understand an identical set of questions has been presented to the Department of Commerce and I am sure that they can provide more accurate information on firm assistance.

There is little substantive overlap in the roles of the Tariff Commission and the Department of Labor. I believe the appropriateness of the Department of Labor's role in the Trade Adjustment Assistance Program will be clear from the following. There are two ways in which a group of workers can become eligible for trade adjustment assistance. The first is by petitioning the Tariff Commission directly. If the Tariff Commission makes an affirmative finding, the Department has relatively simple but necessary functions to perform. It must establish an impact date (the date beyond which imports can be considered the major factor causing unemployment or underemployment), it must define the adversely affected group; and finally, the Department must supervise the delivery of assistance.

Workers can also become eligible as a result of an industry petition. After an affirmative finding by the Tariff Commission, the President can (1) approve escape clause relief, (2) grant permission to workers within the industry to apply for adjustment assistance, (3) grant permission for firms in the industry to apply for adjustment assistance, or (4) provide for any combination of the first three forms of relief. If permission is given to groups of workers to apply for adjustment assistance, it is the responsibility of the Department of Labor, in addition to the roles noted above, to determine whether injury to a specific group from the industry is caused by increased imports.

Under the present statute these functions are necessary and are performed appropriately and efficiently by the Department of Labor. There are, however, certain inadequacies in the present law. The President's Trade Bill of 1969 tries to address some of these inadequacies, specifically the overly stringent eligibility requirements and the role of the Tariff Commission. Suggested changes have also been recommended in the July 1971 report of the President's Commission on International Investment and Trade Policy (the Williams' Commission). At the present time there is a Council on International Economic Policy Task Force, chaired by Under Secretary of Labor Silberman, studying the entire issue of adjustment assistance. About one-half of the Task Force's work has been completed. When their recommendations are presented, we will be in a much better position to propose remedies to the inadequacies of the present law. More importantly, we will understand more fully how trade adjustment assistance relates to U.S. trade policy and to domestic economic policy.

(2) What is the time lapse between the application of firms or workers for eligibility to apply for adjustment assistance and the granting of such eligibility? For example, a constituent firm has indicated to me that after a 3–1 Tariff Commission vote in their favor, it took two months merely to receive certification that they were eligible to apply. How many cases are like this where bureaucratic delays prevent a meaningful and prompt program of adjustment assistance?

The Department of Labor can set an impact date and determine the affected group generally within 30 days in cases approved by the Tariff Commission. Somewhat more time is required to process a worker request for assistance following a successful industry petition. At present, the Department of Labor requires 60 days to gather the necessary information. Certifications are generally issued within 10–14 days following the completion of an investigation. In several instances investigation and certification have been completed within a 60 day period.

These are fairly simple procedures and we have learned to handle them expeditiously. However, there are other steps in the process of obtaining adjustment assistance where regrettable delays do occur. I will discuss these in greater detail under question 4.

(3) Of the firms and workers which have applied for certification of eligibility, how many have received such certification?

As of March 1, 1972, there had been 136 cases in which worker groups filed for assistance under the Trade Expansion Act of 1962. Assistance was granted in 56 of these cases. It is useful to break down these totals in accordance with the distinction I made earlier. Direct petitioning of the Tariff Commission accounted for 123 of the cases and 44 of the approvals. Application by workers to the Department of Labor on the basis of a successful industry petition accounted for 13 cases and 12 approvals.

(4) Of those receiving certification of eligibility to apply, how many received adjustment assistance? And of those receiving adjustment assistance, what was the time period between their application for eligibility and the granting of adjustment assistance?

In the 56 groups approved for assistance, there were 24,000 who could potentially receive assistance. Approximately 15,000 of these have received assistance. The remaining 9,000 either had no need for assistance or failed to apply for it.

The available information does not permit us to calculate an average time lapse between application to either the Tariff Commission or the Department of Labor for assistance and the initiation of assistance. We know that the time period is too long and we are making diligent efforts to correct this problem. The two major delays occur (1) from the injury to the filing of an acceptable petition and (2) from the setting of an impact date by the Department of Labor to the actual delivery of assistance.

The Tariff Commission and the Department of Labor have been discussing ways of reducing the first delay. The Department of Labor has already begun to encourage likely applicants to file and has provided technical assistance to insure that a suitable petition is submitted. The Tariff Commission is considering reducing the information required in petitions and issuing a standard form.

Lack of familiarity with the program on the part of the State agencies which must administer it has been the most important cause of the delay in initiating payment. The Department of Labor has just completed an internal review designed to find ways to overcome this problem. The results of that study combined with more experience by the State agencies should lessen this delay.

(5) Could you also inform the Committee of the nature, scale and level of adjustment assistance over the past five fiscal years on an FY year by FY year basis?

Since the first affirmative Tariff Commission finding was issued in November 1969, we need only consider the fiscal years, 1970, 1971, and 1972. The following table provides the data you requested.

[All figures in thousands of dollars]

Fiscal year	Total	Cash readjustment allowances	Training	Relocation	Administration costs
1970	2,886	2,830			56
1971	19,393	18,026	941	1	425
1972 [1]	15,537	13,803	710	4	1,020
Total	37,816	34,659	1,651	5	1,501

[1] Estimated through December 1971.

THE JUDICIARY COMMITTEE HEARINGS

Mr. TAFT. Mr. President, fascinating though the inner workings of Washington scoop specialists and international conglomerates and their twilight operators may be, the Senate Judiciary Committee, and thereby the Senate, is being misused in the hearings before the Judiciary Committee. The fact that the misuse is at the hands of some Members

of the Senate who have yielded to the temptation to try to build press and political capital should not be allowed further to obscure the important question for the committee and the issue before the Senate.

That question, and it is the sole question, relates to the confirmation of the nomination of Richard Kleindienst as Attorney General. In turn, the only issue raised by the Judiciary Committee hearings connected to that question relates to the soundness of the Government's antitrust settlement with I.T. & T. As to that settlement, Solicitor General Erwin Griswold, former dean of the Harvard Law School, a man of unquestioned integrity and legal judgment has called the antitrust case settlement "an extremely favorable one" to the Government. It stopped in its tracks the rapid and rapacious growth of a company that had mushroomed enormously, unchecked by two prior administrations. It is interesting that at the time of the announcement of the settlement, the stock market and the ITT stockholders did not view this situation any differently. The stock dropped 12 points in the 2 days following the announcement.

Other expert witnesses have concurred with Dean Griswold's and Judge McLaren's assessment that the Government made a tough, hard agreement better than any it could have obtained had it taken the case to the Supreme Court. In any event, the intangible assessment of the settlement is a question which seems most unlikely to be changed in the minds of many by further witnesses and hearings before the Judiciary Committee. Being a question of economic and political nature, if there is to be further question or debate upon it for public consideration, this should occur upon the floor of the Senate—where all sides may be fully and fairly presented. To continue unchecked the pillorying of witnesses before the committee with inept questionings, deep in a morass of hearsay, cannot contribute one whit to a sound judgment on the settlement.

The sideshow that has been continuing in the committee, without the proper restraints or protections which would be afforded by a court of law, is reflecting unfairly, and without chance for defense, upon the integrity of a number of people. We have now even seen a possible endangering of the health and life of one witness.

Mrs. Beard has now testified under oath that the memorandum ascribed to her is a forgery. She has indicated that she has no knowledge as to "who did prepare it, who forged my initial to it, and how it got into Jack Anderson's hands or why. But, I repeat, I do know it is not my memo and is a hoax." Expert opinion using advance techniques which uncovered the Clifford Irving-Howard Hughes hoax, clearly substantiate that the memorandum is a fraud. Susan Lichtman, Mrs. Beard's secretary, has sworn that she does not "recognize it as a memorandum which I typed." ITT Vice President Merriam testified under oath that he never received the memorandum. Mr. Merriam, former Attorney General Mitchell, Judge McLaren, Attorney General-designate Kleindienst and others have all testified that Jack Anderson's inferred connection between the settlement and the proposed contribuition to the San Diego Convention Bureau is a total fabrication. No contrary evidence whatsoever has been forthcoming.

Why, in the face of this state of the evidence, is this hearing continuing? Sadly, the only conclusion must be that political motivations are concerned. If there is a genuine feeling and desire to investigate the operations of the international conglomerate or the activities of large hotel corporations in connection with conventions, then this should be the subject of some other committee hearings, operating, hopefully, in a less sensation-oriented and more productive and careful way. It is time to bring a close to a course that has raised by innuendo and without forum for rebuttal questions of integrity relating to the entire structure of Government. Continuing on this course can only damage all concerned, including the Senate and the governmental institutions of the entire Nation—without justification for doing so.

It is time to say "Begone with your scandal-mongering." The Senate and its committees is no place for it. There is too much important business.

BREACHES OF THE LAWS OF WAR

Mr. JAVITS. Mr. President, in letters to the President and Vice President of the United States, the Association of the Bar of the city of New York, speaking through its president, Bernard Botein, proposed the appointment of a National Commission to conduct an inquiry and make a public report concerning American observance of the laws of war in Indochina and the adequacy of existing rules as applied to contemporary conflict and weaponry.

Because of the importance of this issue and its wide ranging effects I believe that the Senate and the public should be aware of the activities of the Association of the Bar in this area. I ask unanimous consent that letters to the President and Vice President and an answer from a counsel to the President on this subject be placed in the RECORD.

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

THE ASSOCIATION OF THE BAR,
OF THE CITY OF NEW YORK,
New York, January 12, 1972.

Hon. RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As members of the Legal profession, dedicated to the rule of law, we are concerned with observance of law in international matters, as well as in domestic affairs. We therefore are deeply troubled by compelling evidence that serious breaches of the laws of war have been committed by all parties in the conduct of military operations in Indochina. We deplore all such violations, by whomever committed, and consider that measures must be taken and institutions established to assure the fullest possible compliance with the laws of war on the part of all belligerents in present and future conflicts. We believe that, for its part, the United States should demonstrate its determination to that end.

Under international law governing the conduct of warfare, including treaties and conventions to which the United States is a party, the United States Government is obliged to prevent the commission of war crimes, to investigate suspected violations, and, upon determination that any such crimes have been committed, to assure appropriate punishment. As citizens and lawyers, we are deeply concerned that there may have been failures in fulfilling those obligations by United States authorities and courts.

Doubts exist concerning the compatibility of certain policies of the United States with the laws of war and the adequacy of governmental processes for assuring compliance with such laws. Moreover, there is a serious question whether all levels of civilian and military participants have received adequate education, indoctrination and guidance in regard to our responsibilities under the rules of warfare.

The American system of justice holds that no one is above the law. Public faith in that system requires just and rigorous implementation of the law, under even the most difficult circumstances. Our abiding belief in that system impels The Association of the Bar of the City of New York now respectfully to propose the appointment of a National Commission to help assure for the future the more effective enforcement and observance of the laws of war.

Such a Commission would conduct an inquiry and make a public report of its findings and conclusions concerning both the observance of the laws of war in the conduct of the war in Indochina and the adequacy of existing standards in the laws of war to contemporary conditions of weaponry and type of conflict as illuminated by the war in Indochina. Such an undertaking would be in keeping with our nation's and our military leaders' historic contribution to the evolution of the laws of war. The United States during the Civil War took the lead in reducing the laws of war to systematic written form, and United States civilian and military authorities have played a central role in the subsequent development of the laws of war.

The purpose of the Commission should not be to accumulate evidence for war crimes trials. However, an important objective would be to study and appraise the system of military justice and to suggest reforms in education concerning, and enforcement of, the laws of war.

The Commission should be empowered to conduct an inquiry and to issue a public report on the following matters:

I Governing United States policy guidelines and directives, and, in their light, the compatibility with the laws of warfare of such measures as:

(a) free-fire and free-strike zones, aerial bombardment and the use of massive fire power generally;

(b) enforced movement of civilian populations and the quality of protection and care of refugees;

(c) use of biological, herbicidal and other weaponry to inflict environmental and ecological damage;

(d) treatment and interrogation of prisoners of war and civilians suspected of collaboration.

II Methods of supervising the implementation of such guidelines and directives and the effectiveness of such supervision.

III Nature and quality of education and indoctrination, at all levels of civilian and military participation, with regard to the laws of war and their observance.

IV The processes of military justice in dealing with the investigation, prosecution and punishment of suspected war crimes.

V The adequacy of existing standards under the laws of war to contemporary conditions of weaponry and type of conflict.

VI The adequacy of existing methods for assuring universal observance of the laws of war and the potential role of international commissions or tribunals in considering adequacy of existing standards under the laws of war, as well as in assuring observances by all parties to present or future international conflicts.

The Commission should be appropriately composed of jurists, Congressmen, public figures, members of the armed services and others, so that it would have a balance of members with both expert and general knowledge, and so that its work, reports and recommendations would elicit widespread public confidence and support.

The Association of the Bar of the City of New York has a deep and continuing interest in these problems.

Respectfully yours,

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THE WHITE HOUSE,
Washington, February 15, 1972.

DEAR MR. BOTEIN: I have been asked to respond to your letters of January 12, 1972, to the President and the Vice President forwarding a proposal approved by the Executive Committee of the Association of the Bar of the City of New York for the establishment of a National Commission of inquiry on the observance of the laws of war in Indochina.

As outlined in your letter, the scope of the inquiry conducted by the proposed National Commission would also include such problems as the adequacy of existing standards in the laws of war, the validity of United States policy guidelines and directives governing our operations in Indochina, the nature and quality of education and indoctrination with regard to the laws of war and their observance, and an appraisal of the system of military justice. The Association's proposal also contemplates that the Commission would issue a public report on those matters.

The issues raised by your letter are unquestionably important ones, and the concern expressed by your Association is fully shared by this Administration. Indeed, extensive consideration was given by the Administration last year to the question of whether this Administration should itself propose the establishment of such a National Commission, comprising members of the public, Congress, and the Executive Branch, or, alternatively, whether such a Commission within the Executive Branch should be appointed. It was finally concluded by the Administration that neither alternative should be adopted for the time being.

In essence, there were two basic considerations which compelled that conclusion. First, it was believed that the divisiveness of the American public already engendered by conflicting views with respect to the Indochina war in general, and to the processes of military justice in dealing with such unfortunate incidents as the one at My Lai, would be further intensified were a public inquiry to be conducted while hostilities were still in progress in Indochina. Second, the Rules of Engagement governing our military operations in Indochina are, for obvious reasons, classified. Since knowledge of the limitations imposed by the rules on United States and United States supported operations could be of substantial value to hostile forces in Indochina, those rules could not for the time being be made available for the purposes of a public inquiry. Similarly, if such an inquiry were to be conducted solely by the Executive Branch on a classified basis, the Executive Branch Commission could not issue a public report disclosing that security information while military operations continued.

It should not be inferred from the foregoing, however, that we have taken no affirmative action as to these matters. The applicable policy guidelines and directives dealing with the specifics referred to in your letter are the subject of continuing review and of modification when required. Similarly, while we believe that our education and indoctrination programs are far superior to those of most other nations, they can be, and are being, improved. Further, the Department of Defense is committed to thoroughly investigating all allegations of possible war crimes in Indochina which are brought to its attention.

Finally, as you undoubtedly know, the Executive Branch has taken an active role in the current international negotiations sponsored by the International Committee of the Red Cross which look toward the conclusion of new agreements reaffirming and developing international humanitarian law applicable in armed conflicts. We anticipate that the outcome of these international conferences will to a large extent contribute to the further evolution of the laws of war sought by the action recommended by the Association of the Bar of the City of New York.

The interest expressed by your Bar Association in these problems is greatly appreciated.

Sincerely yours,

JOHN W. DEAN III,
Counsel to the President.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
New York, N.Y., March 17, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate, New Senate Office Building, Washington, D.C.

DEAR MR. PRESIDENT: You will recall that in identical letters dated January 12, 1972, addressed to the President of the United States, to you in your capacity of Vice President and to the Speaker of the House, The Association of the Bar of the City of New York has proposed the appointment of a National Commission to help assure for the future the more effective enforcement and observance of the laws of war.

Such Commission, in our view, should be empowered to conduct an inquiry and to issue a public report in regard to such matters as United States guidelines and directives covering obligations under the laws of war, methods of supervising their implementation, education and indoctrination of all military and civilian levels regarding such laws, adequacy of the processes of military justice in dealing with suspected war crimes and the adequacy of existing standards under the laws of war to contemporary conditions of weaponry and type of conflict.

A copy of our letters of January 12, 1972 is enclosed for your convenience.

The Association has received a reply dated February 15, 1972 from Mr. John W. Dean, III, Counsel to the President, a copy of which is transmitted herewith. It will be noted that, for reasons set out in that letter, the Administration has declined to act upon the proposal of the Association.

The Association, nevertheless, adheres to the view that the issues involved are of sufficiently grave public concern to call for action along the lines of our proposal. We are convinced that such action would help unite and inform public opinion and that it would not require access to properly classifiable information.

The Association, in collaboration with other legal and civic organizations, accordingly, is considering the feasibility of itself proceeding with such an inquiry. We believe, however, that it could be most effectively conducted by an official body, empowered to hold hearings and to make studies and reports appropriate to the nature of the problem.

Despite the negative conclusion of the Administration, the Association renews its recommendation that the Congress make provision for the conduct of such an inquiry. Such action, in our view, involves matters clearly within the proper scope and interest of the Congress, both in aid of legislation which might be suggested by such an inquiry, and the improvement of Congressional-Executive relationships designed to assure respect for and compliance with these momentous legal and moral obligations.

We renew our assurance of the deep and continuing interest of The Association of the Bar of the City of New York in these problems and urge your prompt and favorable consideration of our proposals.

Sincerely yours,

BERNARD BOTEIN.

CONCLUSION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

EXTENSION OF AUTHORITY CONFERRED BY THE EXPORT ADMINISTRATION ACT OF 1965

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 671, Senate Joint Resolution 218.

The PRESIDING OFFICER (Mr. MANSFIELD). The clerk will report the measure.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 218) to extend the authority conferred by the Export Administration Act of 1969.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The Senate proceeded to consider the joint resolution.

Mr. STEVENSON. Mr. President, the authority conferred by the Export Administration Act expires May 1, 1972. This resolution simply extends that authority for a period of 3 months, to August 1, 1972. Before that latter date, the Senate Committee on Banking, Housing and Urban Affairs will give serious consideration to the whole subject of export controls and will by that date report out a bill.

This bill, as I say, would simply extend the Export Administration Act of 1969 to August 1, 1972.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. STEVENSON. I yield.

Mr. JAVITS. Mr. President, I hope very much that the Senate will pass this measure. It is a brief extension, but it is very important as it encompasses the period during which the President will go to the Soviet Union.

In reviewing our relations with mainland China and the Soviet Union we find that they are heavily based upon the issue of trade. Trade liberalization has taken place and can take place to a greater extent, if desirable and necessary. Expanded trade and commercial relations can be a major privilege.

I hope very much that the passage of this extension measure will signal our accord with the President that this is one of the highest priority subjects to be discussed on his visit to the Soviet Union. It is an area where future significant progress can and should be made as negotiations continue.

No one wants our guard relaxed in terms of strategic items. However, there are three lists: One, strategic items; another, nonstrategic items; and another that is in between. A review of lists is probably long overdue.

The Congress and the administration have already shown by the recent waiver of the President, whereby the private investment guarantees and programs of the OPIC are now operating in Yugoslavia and Rumania, that we clearly welcome some fruitful way, without being euphoric about it, of expanding the trade and investment possibilities between our country and the countries of Eastern Europe. There is also the positive movement in respect to MFN for Rumania. Similar opportunity could exist over time with the Soviet Union and the People's Republic of China.

Let us remember that the greatest opportunity for the expansion of trade in a way which is constructive in itself but also to other issues exists in areas of the world where there is very little trade. That includes the Communist countries and vast areas of the lesser developed countries.

For all of these reasons, and especially because it will show a sense of unity with the President in this particular matter of expanding trade, securely and wisely I add immediately, I very much hope the bill passes.

AMENDMENT NO. 1076

Mr. TAFT. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). The amendment will be stated.

The legislative clerk read as follows:

On page 1, after line 5, insert the following:

SEC. 2. Section 2 of the Export Administration Act of 1969 (50 U.S.C. App. 2401) is amended by adding the following finding of Congress as subsection (5):

"(5) The application of United States export controls to commodities which are available without restriction from industries in countries with which the United States has defense treaty commitments or are utilized almost exclusively in nonstrategic production unnecessarily handicaps United States industry in competing for export sales."

SEC. 3. Section 3 of such Act is amended by adding the following declaration of policy by Congress as subsection (6) thereof:

"(6) It is the policy of Congress that the appropriateness of subjecting, or continuing to subject, particular commodities to United States export controls should be determined after review and consultation by and between representatives of interested United States governmental agencies and qualified experts from private industry."

SEC. 4. Section 4(a) of such Act is amended by adding the following as subsection (3) thereof:

"(3) Upon the enactment of this subsection, the Secretary of Commerce shall undertake, with the cooperation of other interested United States agencies, an immediate investigation to determine which commodities should no longer be subject to United States export controls. In making this determination, the Secretary of Commerce shall no longer apply United States export controls to commodities which are available without restriction from sources outside the United States in significant quantities of quality comparable to that of such commodities produced in the United States: *Provided*, That such export controls may continue to be applied upon presentation to the Secretary of clear and convincing evidence demonstrating that the absence of such controls would constitute a threat to United States national security. The Secretary of Commerce shall give priority in such investigation to determining whether United States export controls should continue to apply to commodities for which there is a significant potential export market. The Secretary of Commerce shall complete such investigation by December 31, 1972, and shall submit by that date a special report to the Congress specifying those commodities for which United States export controls have been removed pursuant to such investigation. Such report shall also specify those commodities which remain subject to export controls greater than those applied by nations with which the United States has defense treaty commitments and the reasons for retaining any such controls."

SEC. 5. Section 5 of such Act is amended by adding the following as subsection (c) thereof:

"(c) To effectuate the policy of section 3(6) of this Act, the Secretary of Commerce shall appoint Joint Technical Advisory Committees composed of representatives from interested United States governmental agencies and experts from private industry. Such Committees shall be appointed for each of the groups of products subject to United States export controls and shall be convened for their first meetings not later than sixty days after this Act takes effect. The Joint Technical Committees shall meet regularly to advise and assist the Secretary of Commerce on action for the purpose of carrying out the policies set forth in section 3 of this Act and shall be consulted with respect to the level of United States export controls applicable to all commodities, including those whose export is subject to multilateral controls undertaken in cooperation with nations with which the United States has defense treaty commitments. Such Committees shall be consulted and kept fully informed of progress with respect to the export control investigation required by section 4(a)(3) of this Act."

Mr. TAFT. Mr. President, this amendment would amend the Export Administration Act to require prompt decontrol of the unilateral U.S. export controls which are not necessary to protect our national security.

Mr. President, I feel strongly, with the concurrence of the Senator from Illinois and the Senator from New York, that it is necessary to extend this authority. I feel, however, that we ought to recognize that it is extremely important at an early date to take a new look at this entire area.

The testimony in the hearings before the Committee on Banking, Housing and Urban Affairs on this subject was full of evidence concerning the fact that the United States, in effect, is handicapping itself by continuing the present system of export controls which control many items which are not of strategic value and not covered by the COCOM list.

Even within the COCOM list there is a lot of question whether other major industrial competitors of ours, with relation to items that are not of high priority from the standpoint of national defense, are not circumventing the import of items on the COCOM list.

Upon the enactment of the amendment, the Commerce Department would head up a study to determine which commodities should be at least partially decontrolled. Commodities for which there is a significant potential export market would be given priority in the review process. Unless clear and convincing evidence is presented that the absence of export controls on a commodity in question would constitute a threat to the national security, commodities which are available without restriction from sources outside the United States would be decontrolled. Such decontrol would take place by the end of this year. At that time the Secretary of Commerce would be required to give reasons for retaining unilateral controls on any specific item.

My amendment also provides for the establishment of Government-industry joint technical advisory committees. These committees would be consulted and informed with respect to the level of U.S. export controls, including those controls which are imposed internationally under the coordinating committee, or COCOM, agreement.

In the 1969 committee report on the Export Administration Act, the Senate Banking and Currency Committee stated its belief that—

> It is desirable that this Nation do everything it can to increase its exports. The Committee believes that any restriction of exports is unwarranted if it does not serve some positive function.

It could not have been made clearer that the committee desired the decontrol of U.S. exports to the maximum extent possible. Yet the information which was brought forward in the recent Banking Committee hearings has convinced me that our Government is, in some ways, dragging its feet in the area of export decontrol.

There can be no doubt that some progress has been made since the enactment of the 1969 act. But our list of unilaterally controlled commodities remains far longer than the list of any other COCOM country. In addition, American businesses must face a more expensive and drawn out export licensing process than their foreign competitors.

The excessively long list of unilaterally controlled commodities results both from insufficient decontrol of items which are available from foreign sources, and from an overly restrictive interpretation of what must be controlled in the interest of national security.

The 1969 committee report on the Export Administration Act stated that—

> For the U.S. to attempt to unilaterally control the export of goods which are freely available from other sources is both futile and useless.

In accord with this policy, more than a year ago the Office of Export Control initiated a review of licensing requirements for machine tools. Because the machine tool industry was encouraged to believe that nonstrategic machine tools which are readily available from foreign sources would be decontrolled, they cooperated by providing extensive data. The industry studies showed that many nonstrategic items were readily available from European and Japanese sources. These were not high technology items, but common machine tools such as lathes. Yet, in the period of almost 1 year since the last of these reports was submitted, not a single machine tool has been decontrolled.

The machine tools subject to U.S. uni-

lateral controls include virtually all machines not on the COCOM list. They are, however, available without licenses from our Western European and Japanese competitors. Indeed, other governments positively encourage such shipments in many cases. Some of them provide generous financing to foster sales in the U.S.S.R. and Eastern Europe. This situation makes our Government's refusal to decontrol machine tools all the more damaging to domestic producers.

We have seen some indications in the news this week of an upturn in machine tools, but that is only from the very bottom level and it is no indication of the severe stress to which this vital industry is being subjected.

The provision of the current law for denying export of commodities deemed to have "significant military applicability" or strategic value is absolutely essential to our national security. At present, however, many commercial-grade computers and types of electronic equipment are denied export licenses because one or more agencies of the Government consider them to have a potential for military use even though these items are intended for commercial or nonmilitary scientific application. In my opinion, it is questionable that any nation would import such equipment for the sole purpose of achieving military or strategic advantage and at the same time be forced to rely on U.S. manufacturers for the spare parts, maintenance, and services which would be necessary to maintain such an advantage. The Government should consider decontrolling such items.

The time delays which would be serious in any commercial transaction are especially serious in dealing with the Russian and Eastern European markets, because U.S. suppliers already face several built-in disadvantages. These disadvantages include a lack of familiarity with the market; remoteness, and thus the fact that long shipping intervals are required; the relative lack of hard currency; and the unwillingness or inability of the United States to accept merchandise from the U.S.S.R. and Eastern Europe in payment for U.S. goods. Coupled with these disadvantages, delays in the processing of export licensing can mean the loss of millions of dollars' worth of business to foreign competitors.

Nevertheless, some export license applications have languished for months, for more than a year. The Government debated whether to allow U.S. participation in Russian truck plants. Even where there is no major political issue raised by an application, it can take months to secure a license for equipment subject to unilateral controls. The licensing process is expensive and frustrating, particularly for the small company not familiar with current practices and procedures.

I realize that part of the reason for this problem is that the Office of Export Control is understaffed and underfunded. I hope that the Commerce Department will shift its priorities to remedy the situation, and that Secretary Peterson will take whatever other steps he thinks will expedite the processing of licensing applications. I believe that the most effective answer to the problem, however, is to remove the controls completely for all commodities except those where control is clearly necessary and wise or pursuant to controls.

I am proposing the establishment of Government-industry joint technical advisory committees for several reasons. Most importantly, to administer export controls properly, our Government needs to use the technical expertise which only representatives of the industries affected can provide. The Office of Export Control and the Interagency Coordinating Committee are responsible for applying export controls to all kinds of commodities. These Government officials are necessarily generalists, and it is impossible for them to become familiar with the intricacies of each product which must be regulated. Yet that is exactly what is necessary to give the definitions of items on the export control list the needed precision and uniformity. The formulation of such a definition cannot merely be considered as bureaucratic categorizing. It is an important business decision, and the Government officials who must make it should have the full benefit of industry experts' advice.

The joint technical advisory committees would also serve to increase industry's awareness of developments in export control, and the Government's awarness of business developments. Several industry representatives expressed the belief in testimony that the Government needs to improve its efforts to keep them informed. For example, one witness said that his industry could not come across such vital information as who the U.S. negotiators at the COCOM are or what their instructions are. There is also room for improving the flow of information to industries with regard to the status of their applications for export licenses while they are being processed. On the other hand, through the committees, the business community would be able to contribute more up-to-date information as to the status of U.S. technology and actual commercial conditions in the countries subject to controls.

In addition to the measures to facilitate East-West trade which are required by my amendment, there are several other steps which I believe our Government should take. If there was one salient fact which was revealed in our subcommittee's recent hearings, it was the outdatedness and restrictiveness of the COCOM controls. I would like to see the United States take the initiative in rationalizing the COCOM list and the administration of the COCOM controls. The United States should suggest to the COCOM which items on the list are not of strategic significance to the member countries. We should also initiate an effort to develop criteria for the granting of exceptions to the COCOM controls. These criteria should be uniformly followed by all COCOM members, including the United States. This would remedy the present situation, where it is much more difficult for an American industry to persuade its Government to fight for an exception than it is for foreign competitors to do so. We should also take advantage of the new joint technical advisory committees to help COCOM bring its commodity definitions up to date and make them more exact.

Our Government should make an effort to reduce the risk which industries must incur when they do business in Eastern Europe and the U.S.S.R. The President should authorize the Export-Import Bank to provide insurance against the nonrenewal or cancellation of an export license before the export transaction is completed. Since nonrenewal or revocation may be due to circumstances beyond the manufacturers' control, such as a change in foreign relations, it is appropriate that the Government extend this insurance. Such insurance is already provided for exports to Rumania and Yugoslavia. There would seem to be no reason why it should not be extended to other Communist countries.

The business risk involved in licensing can be lessened still further if the initial validity of a license is lengthened from the present period of 1 year. A license should ordinarily be good from the time of approval until the completion of the export transaction. In addition, the Government should enlarge the scope of export licenses to include authority to export replacement parts that may be required in the normal course of a machine's life. This would reduce the risk to the importer of buying American goods. It would also prevent situations where the importer must conclude that American sellers have cajoled him into buying a machine which he cannot service, and which is therefore useless to him.

From both an economic and a political standpoint, it is imperative that Congress and the administration act immediately to enlarge their opportunities for doing business with the eastern European countries. In purely economic terms, the opportunities are great and the domestic needs are great.

I received a report only today containing statistics, which I am glad to call to the attention of the Senate, showing lagging U.S. trade in Eastern Europe.

In 1970 U.S. exports to Eastern Europe were $350 million. Exports from other Western countries were more than $8 billion.

The U.S. share of the world market was about 16 percent. The U.S. share of the Eastern European market was about 3 percent.

The trend in Eastern European trade since the 1969 act was as follows: U.S. exports to Eastern Europe as a percentage of COCOM exports to Eastern Europe: 1967, 4.35 percent; 1969, 3.92 percent; 1970, 4.89 percent.

In 1971, approximately 4 percent.

For example, the machine tool industry conducted its first industry organized Government-approved trade mission to the U.S.S.R. and Hungary last spring. During these sessions, Soviet officials gave the companies requests for quotations for U.S.-built machine tools that totaled more than $50 million. As a result of the industry's mission to Poland, which has just returned, industry officials expect that more than $50 million in requests will be received by the U.S. machine tool companies who participated in the mission.

These markets are just opening up. If U.S. companies are to participate in them, they must be able to move in now unless U.S. strategic interests are involved.

It is important to the machine tool industry to take advantage of these opportunities to the extent proper by these standards the domestic industry is severely depressed.

Production and new orders for machine tools have declined sharply over the past 5 years. By the end of 1971, backlogs had dropped 66 percent below the 1966 level. Profit margins averaged less than 2 percent of sales in 1971 and they are likely to be even lower this year. Many machine tool companies suffered severe losses in 1971. In addition, I have already pointed out that foreign competitors are more than capable of supplying these new markets. These competitors increasingly have been outselling the U.S. machine tool industry all over the world, where there have been no U.S. unilateral export controls to help them. They will outsell our industry to an even greater extent in Eastern Europe unless we move immediately to facilitate trade by loosening our export controls.

There are also indications that several other industries, such as office equipment and computers, may be in the same position as the machine tool industry.

In addition to these economic advantages, the political advantages of immediate trade liberalization with Eastern Europe and the U.S.S.R. might be considerable. They would to some extent counterbalance and parallel the improved relationship with China which the President has worked so hard to bring about. A clear indication from Congress that trade liberalization is desirable would also give President Nixon more flexibility to deal with the Russians when he goes to Moscow in May. These advantages would be augmented by the good feelings which are bound to result from any improvement in trade relations.

In short, the time is opportune and the need is great. For the sake of both our own industries and of improving international relations, the Government should promptly adopt these suggestions for liberalizing our export control system.

I am aware, of course, that the bill before us does call for an extension of only a 3-month period. I am also aware, as has been pointed out by the Senator from New York, that in going to Moscow this year the President should be given a free hand; but in giving him a free hand to discuss this subject—and I hope it is discussed; I think it is extremely important that it be given high priority in the discussions—I think it is important that there be a recognition of the very strong feeling of the Senate with regard to this matter. I think the position of the committee in this regard was almost a unanimous one.

I, in recognition of the President's position and the delicate nature of the negotiations, am, in a minute, going to ask consent to withdraw the amendment at this time, but only after serving notice that this is the direction we must take. Once the Moscow talks are over with, I hope the Senate will consider this matter with a great deal of dispatch.

Mr. STEVENSON. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. STEVENSON. I want to commend the Senator from Ohio for very convincingly pointing to some of the needed corrections in our export control legislation and the competitive disadvantages which run to the country at times in the administration of the law. The Senator has made a very convincing case, and it is a case with which I am sympathetic.

I have discussed this matter with the chairman of the Senate Subcommittee on International Finance (Mr. MONDALE). I know that he is sympathetic.

It is my understanding that the Senator's amendment, if it is withdrawn, would—and should, in my own judgment—receive very serious consideration by the Senate Committee on Banking, Housing and Urban Affairs, along with the whole subject of export controls in the immediate future, and before the legislation, as amended by this resolution, expires on August 1.

Mr. TAFT. I thank the Senator for his comments.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr JAVITS Mr. President, I would like to join the Senator from Illinois in commending the Senator from Ohio. I think it is a splendid initiative. I recall the days in the House Foreign Affairs Committee—this goes back 15 years or more—when we considered the Battle Act, introduced by Laurie Battle, which put the United States in a position to engage in these controls.

It was then contemplated that we would always give the sharpest review to the whole program. It is only if Congress joints in the initiative that the Executive can take up that initiative, because the Executive alone is reluctant to be identified with anything that conceivably would let the bars down and equip the "enemy" or the potential "enemy" with strategic materials. We all know how such things can be distorted. So the doubt has to be resolved by Congress. By taking the initiative can we say to the Executive that we want to be secure, but we do not want to be fool-safe in terms of this Nation.

So I thoroughly commend the Senator, and hope that his effort will get somewhere, and I shall certainly help him in every way. I am glad, too, that he has seen fit to let this bill go through as it stands.

One final comment, and that is that the Senator's work must be considered, too, with the totality of the work which, if protectionism is to be avoided in this country, will be necessary. First, much more remains to be done to stimulate and encourage exports, building on the impressive efforts to date of the Export-Import Bank and the U.S. Department of Commerce. Still today many American firms are not interested in export trade, because it has not been facilitated. The facilitation of trade of American businesses lags far behind the stimulation of trade by European and Japanese trade ministries often through their diplomatic missions.

Second to be considered is the matter of countervailing duties and antidumping matters, and the prompt and adequate enforcement of these and other laws and regulations already on the books.

Third, the negotiation of nontariff barriers to trade, in the context of major trade negotiations in 1973 encompassing both agricultural and industrial products.

Fourth, the very urgent need for international monetary reform, and we are hopefully on the threshold of that.

So I am glad to see the Senator identifying himself with those forward looking forces. I welcome the Senator's intiatives and will certainly do everything I can to make his efforts good.

Mr. TAFT. I appreciate very much the remarks of the distinguished Senator from New York in a field in which he has long been one of the leading spokesmen, and I certainly want to express my concurrence with his concern and his expressions with regard to the necessity of building U.S. trade abroad, not merely with regard to this act and the approach to this act which my amendment would indicate, but also, where we feel that we can do so, in the area of financing, extending the authority of the Export-Import Bank, and in the area of trying to encourage doing something to build up exports while imports continue to come into this country.

The newspapers this morning again pointed out the unfavorable trade balance we have had. The reason is not that we have had an increase in imports which is unjustified. In some instances, there has been unfairness with respect to the positions of the nations involved, but principally it has come about, I think, because we have not used fully the potentials of this country for building markets abroad; and I think some legislation in this area is vital to achieve that purpose.

Mr. President, in the Washington Post of Thursday, March 23, 1972, there appeared an excellent article, written by Dan Morgan, entitled "Western Firms Evade Ban on Strategic Goods for Soviet Bloc," which discusses many of the matters that have been brought to the attention of the Senate in connection with my remarks this morning. 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:

WESTERN FIRMS EVADE BAN ON STRATEGIC GOODS FOR SOVIET BLOC

(By Dan Morgan)

WARSAW.—One of the most mysterious East-West stories today is that of the curious ways in which supposedly secret capitalist technology finds its way into communist factories.

All through the Cold War, NATO and Japan attempted to slow down Soviet military development by drawing up elaborate embargo lists of advanced technological processes and equipment that were considered strategic.

Now the entire system of embargoes seems to be coming apart, under the pressures of Western business competition and some of its own built-in absurdities.

Taking at face value pentagon assertions that Moscow has achieved military parity

with the West and is nearing technological parity, some businessmen are suggesting that the whole system be scrapped or at least drastically revised.

That would certainly be a good thing for the 100 million East Europeans outside the Soviet Union, who would benefit materially. President Nixon's decision last year to authorize the sale of advanced oil refining equipment for the Polish chemical works at Plock, for example, will be a boon to the country's motorists.

It may be questionable how much the erosion of the embargo system really threatens the security of the United States.

It has long been rumored that the Soviet space program employs IBM and Universal computers—without, of course, the approval of Washington.

What is known for sure is that West European and Japanese companies have been using all sorts of means to circumvent the embargo and sell their most advanced know-how and machines to Eastern Europe.

This is becoming more visible as American businessmen, encouraged by the Administration's more lenient trade policies, begin to test the water in Eastern Europe.

One American businessman who was visiting Warsaw last week told of seeing embargoed British equipment in one East European plant he visited .

In other cases, he said, British companies have fooled the international board that administers the embargo by listing the proposed equipment under a harmless-sounding name different from the one on the prohibited register. Thus, a reactor part could become a "heating element."

The international board is known as COCOM, for Coordinating Committee, which has members from the NATO countries—including France, but not Iceland—and Japan. U.S. participation was authorized by the Mutual Defense Assistance Control Act of 1951.

COCOM, which is now meeting in Paris, must pass on exports before the home government issues export licenses. But some businessmen feel COCOM lacks the expertise to decide whether a given item falls under the embargoed category.

Japan, which supports its domestic industry to the hilt, pays almost no attention to the embargo.

However, the United States maintains a prohibited list longer than CO-COM'S and more secret. U.S. businessmen asking to see what actually is embargoed have been turned down and referred to the British list, which is accessible.

A number of companies have managed to get around the embargo by selling to countries such as Yugoslavia, that are not covered. The equipment is then reexported into the Soviet Union. Through this method, some highly advanced computer technology has reached the embargoes area.

U.S. businessmen also say that France has been a major violator of the technology freeze-out. At least one French company was punished with a one-year ban on U.S. imports for violation of NATO rules.

American firms with subsidiaries in Western Europe use their subsidiaries to overcome the longer, American embargo list. Through the subsidiary means, large quantities of high-grade American electronics equipment were rushed into Czechoslovakia during the economic relaxation of 1968. The various ruses have masked the full extent of East-West trade.

Nevertheless, there is little doubt that the American restrictions have a drawback to development in Eastern Europe. Yet they have had no effect on Communist policy toward the west.

Poland is an excellent example of how the American technological lock has been applied

In three key areas—catalytic cracking for oil refining, semi-conductors for computers and tape copying devices for television—the Poles have been trying to acquire technology that only the United States has.

Development of advanced computers in the Communist bloc has been limited by deficiencies in producing integrated circuits.

In the other two areas, the U.S. has finally relaxed restrictions to enable an American firm to sell the Plock refinery a catalytic cracker for making high-octane gasoline. And it has authorized the California-based Ampex corporation to sell the Polish television enterprise $1 million in tape copying equipment. Apparently, a good system for using tapes, rather than films, to copy television programs is unavailable in the Soviet bloc. The Ampex technique eliminates laborious cutting and splicing of film and will streamline the entire Polish television network.

Symbolically, the American cracker in Plock will be adjacent to an inferior Soviet model. Twelve American technicians will be at the refinery for two years and housing for the families is already being sought.

There are arguments on both sides of the strategic lists debate. Pentagon supporters say all high-grade technology has military application, and that the embargoes have cost the Russians precious years of painstaking research.

The counter argument is that technology—particularly in such fields as electronics and computers—is quickly perishable and outdated by the staggering pace of advance in the U.S. The rigid Soviet-bloc economic systems are often too muscle-bound to adapt even what they buy.

Also, by withholding the technology, the U.S. forces the Soviet bloc to develop research and support systems of its own. The Poles claim to have been on the brink of a breakthrough in television copying technology when the U.S. finally authorized the Ampex sale. Moreover, the Poles told the U.S. that they could buy the equipment anyway through other channels—though at three times the price.

Mr. TAFT. Mr. President, I ask unanimous consent that amendment No. 1076, which I have offered, be withdrawn.

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). Unanimous consent is not required. The amendment is withdrawn.

The joint resolution is open to amendment.

Mr. STEVENSON. Mr. President, I have no knowledge of further amendments to be offered.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution (S.J. Res. 218) was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

The joint resolution (S.J. Res. 218) was passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14 of the Export Administration Act of 1969, as amended (Public Law 92-37; 85 Stat. 89), is amended by striking out "May 1, 1972" and inserting "August 1, 1972".

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT OF MANPOWER DEVELOPMENT AND TRAINING ACT OF 1962—CONFERENCE REPORT

Mr. STEVENSON. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3054) to amend the Manpower Development and Training Act of 1962. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report, which reads as follows:

CONFERENCE REPORT (S. REPT. No. 92-725)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3054) to amend the Manpower Development and Training Act of 1962, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following: That (a) section 310 of the Manpower Development and Training Act of 1962 (42 U.S.C. 2620) is amended by striking out "1972" the first time it appears in such section and inserting in lieu thereof "1973".

(b) Section 310 of the Manpower Development and Training Act of 1962 (42 U.S.C. 2620) is further amended by striking out the colon and the following: *"Provided,* That no disbursement of funds shall be made pursuant to the authority conferred under title II of this Act after December 30, 1972".

SEC. 2. All real property of the United States which was transferred to the United States Postal Service and was, prior to such transfer, treated as Federal property for purposes of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), shall continue to be treated as Federal property for such purpose for two years beyond the end of the fiscal year in which such transfer occurred.

And the House agree to the same.

GAYLORD NELSON,
EDWARD M. KENNEDY,
WALTER F. MONDALE,
ALAN CRANSTON,
HAROLD E. HUGHES,
ADLAI STEVENSON,
JENNINGS RANDOLPH,
BOB TAFT, JR.,
J. JAVITS,
RICHARD SCHWEIKER,
PETER H. DOMINICK,
J. GLENN BEALL, JR.,
Managers on the Part of the Senate.

CARL D. PERKINS,
DOMINICK V. DANIELS,
LLOYD MEEDS,
ALBERT H. QUIE,
MARVIN L. ESCH,
Managers on the Part of the House.

Mr. STEVENSON. Mr. President, the conference agreement on S. 3054 simply extends the Manpower Development and Training Act for 1 year—until June 30, 1973. In addition, the prohibition in existing law which provides that funds to carry out contracts entered into prior to such expiration date may not be disbursed later than 6 months after such termination date is deleted by the conference agreement.

The conference agreement also pro-

vides that for purposes of Public Law 874, 81st Congress, relating to assistance for schools in federally impacted areas, Federal property transferred to the U.S. Postal Service shall continue to be treated as Federal property for 2 years.

Mr. President, this bill has the unanimous and bipartisan support of all conferees from both the Senate and the House.

It is urgently needed so that on-going programs will not be interrupted. I urge its adoption at this time.

Mr. JAVITS. Mr. President, if the Senator will yield, I think the agreement of the conferees was unanimous, and the extension is certainly needed. I hope the Senate will agree to it.

I was the principal sponsor with Senator NELSON, of S. 3054, the Senate provision. In light of the unlikelihood of getting a new reformed manpower system in place this year, this extension is very desirable. I urge, however, that we press for reform at the earliest opportunity and I introduced yesterday S. 3421, the Community Manpower Training and Employment Act to that end.

The Manpower Development and Training Act of 1962 is one of our principal authorities for job training, upgrading and work experience programs for economically disadvantaged, unemployed and underemployed persons at the present time, benefits to hundreds of thousands of enrollees.

Under its authority such crucial programs as the JOBS program—jobs in the private sector; the Neighborhood Youth Corps summer in-school and out-of-school programs, and other activities, including programs conducted by the States, have been conducted over the years.

It is important that these programs be continued while reform is considered.

The conference report also includes the Senate provision granting a 2-year grace period to school districts which have been receiving Public Law 874 impact aid payments on the basis of workers employed on property which has been transferred to the Postal Service. This is necessary because the change of the Post Office Department to a public corporation affects the eligibility of postal properties under the impact aid programs. Thus some 700 affected school districts are provided a needed phase-out period after Federal activity has ceased.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the joint explanatory statement of the committee of conference be printed at this point in the RECORD.

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

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two houses on the amendment of the House to the Senate bill (S. 3054) to amend the Manpower Development and Training Act of 1962 submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The points in disagreement and the conference resolution of them are as follows:

1. The House-passed amendment would extend the authority conferred under title II of the Manpower Development and Training Act for one year beyond the existing law's expiration date of June 30, 1972, by inserting in lieu thereof the termination date of June 30, 1973.

The Senate-passed bill does not contain the above provision.

The Senate recedes.

2. The House-passed amendment would extend for one year the existing law's provision that no funds to carry out obligations entered into prior to the termination date may be disbursed later than December 30, 1972—six months after the termination date.

The Senate-passed bill would delete this six months limitation altogether.

The House recedes.

3. The Senate-passed bill also contains the following provision, providing that for purposes of Public Law 874, relating to assistance for schools in federally impacted areas, Federal property transferred to the United States Postal Service shall continue to be treated as Federal property for two years.

The House passed H.R. 11809 on December 6, 1971, containing the same language as section 2 of the Senate-passed S. 3054.

The House recedes.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the requirement that the conference report be printed as a Senate report be waived, inasmuch as under the rules of the House of Representatives it has been printed as a report of the House.

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

WAR POWERS ACT

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). Under the previous order, the Senate will resume the consideration of the unfinished business (S. 2956), which the clerk will state.

The legislative clerk read as follows:

A bill (S 2956) to make rules governing the use of armed forces of the United States in the absence of a declaration of war by the Congress.

PRIVILEGE OF THE FLOOR

Mr. JAVITS. Mr. President, I ask unanimous consent that during the consideration of this measure I may have present on the floor to assist me two members of my staff, Mr. Charles Warren and Mr. Peter Lakeland.

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

Mr. SPONG. Mr. President, I ask unanimous consent that during the consideration of this legislation, I may have present on the floor, from my staff, Mrs. Carolyn Fuller.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. 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.

Mr. JAVITS. The war powers bill (S. 2956) is one of the most important pieces of legislation in the national security field that has come before the Senate in this century. The bill's various sections are carefully interrelated and interdependent. As the Senator who probably has had the longest experience with the evolution of the bill, I will concentrate my remarks on an explanation of the bill and how it is intended to work, and I shall try to dispel the allegations which have been made against it by the State Department and other critics.

I shall begin by dealing with the constitutionality of S. 2956, as well as its historical background and then proceed to a detailed explanation of the bill.

In this connection we should begin with the words of the Constitution itself because from what many critics of S. 2956 have said, it almost seems as if they have neglected to read what the Constitution in fact does say about the war powers.

WAR POWERS OF CONGRESS

Article I, section 8 of the Constitution enumerates the war powers of Congress. The list of these powers is both detailed and comprehensive:

Provide for the common defense.

To define and punish . . . offences against the law of nations.

To declare war.

To raise and support armies.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws . . . and repeal invasions.

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States.

The powers of Congress which I have just listed are extensive and specific, but the Founding Fathers went even further to buttress the power of Congress in this field. They did this by concluding article I, section 8 with an all-inclusive power—the "necessary and proper" clause, which empowers Congress:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and *all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.*" (italics added)

THE PRESIDENT AS COMMANDER IN CHIEF

And, compared with the war powers of Congress so specifically enumerated in the Constitution, let us examine the war powers actually granted to the President in the Constitution. These powers at best can be described as sparse and cryptic. Article II, section 1 states:

The executive power shall be vested in a president of the United States of America.

Article II, section 2, states, without further elaboration:

The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States.

It would be useful at this point to take a look at the "legislative history" of the Commander in Chief concept as it is used in the Constitution. There was no doubt in the minds of the drafters of the Con-

stitution about who would be the first President of the United States. George Washington was elected unanimously to the office less than 2 years after completion of the Constitutional Convention. Twelve years earlier, in June 1775, the Continental Congress had appointed George Washington to be "Commander in Chief" of the colonial forces. Washington held this post as Commander in Chief until his formal resignation and return of his commission in December 1783. He was the only Commander in Chief the United States had ever had when in 1787 the Constitution was drafted and the phrase "Commander in Chief" written into it.

Clearly, the drafters of the Constitution had the experience of the Continental Congress with George Washington in mind when they designated the President as "Commander in Chief" in article II, section 2. Thus, the "legislative history" of the constitutional concept of a Commander in Chief was the relationship of George Washington as colonial Commander in Chief to the Continental Congress.

That relationship is clearly defined in the Commission as Commander in Chief which was given to Washington on June 19, 1775, and which was formally returned by him to the Continental Congress on December 23, 1783.

I would like to quote the final clause of this Commander in Chief's Commission, because it establishes the relationship of the Congress to the Commander in Chief in unmistakable terms:

> And you are to regulate your conduct in every respect by the rules and discipline of war (as herewith given you) and punctually to observe and follow such orders and directions from time to time as you shall receive from this or a future Congress of the said United Colonies or a committee of Congress for that purpose appointed."

THE PRESIDENT'S EXPANDING POWERS

I have dwelt at some length on this question of the Congress war powers, and the relationship of those powers to the President's function as Commander in Chief, because critics of the war powers bill so often choose to ignore what the Constitution says. Moreover, out of the sparse and cryptic language of article II, section 2 of the Constitution there has grown up an extraordinarily overblown doctrine of so-called Commander in Chief powers. The outer limits of this doctrine are cited as a barrier against even the exercise by Congress of its own clearly enumerated war powers. For instance, in his testimony before the Senate Foreign Relations Committee, Secretary of State Rogers approvingly quotes the following assertion of the Truman administration:

> The President, as Commander-in-Chief of the Armed Forces of the United States, has full control over the use thereof.

To this ever expanding doctrine of exclusive Commander in Chief power, Secretary Rogers added a new dimension of his own, in telling the Foreign Relations Committee:

> I would think that his powers as Commander-in-Chief would authorize him to take whatever action he felt necessary to try to protect the safety and the lives of our prisoners of war.

Presumably, this could include authority on his own to invade North Vietnam, Laos, Cambodia, and perhaps even the People's Republic of China. I doubt that there are many Americans who would go this far even to agree with Secretary Rogers.

HISTORICAL AND CONSTITUTIONAL PERSPECTIVES OF THE WAR POWERS BILL

The constitutional aspects of the war powers bill were investigated in a most authoritative way in the hearings conducted by the Foreign Relations Committee. The record of those hearings is already coming to be recognized as the most comprehensive and authoritative examination in existence of the constitutional war powers issues. Law schools from all around the Nation are writing in for copies. I commend the hearings to all Senators interested in this subject.

The question has been asked, quite rightly, why—after all these years—do we need a war powers bill now? It is clear that the administration opposes any legislation in the war powers field and is apparently quite happy with the present situation. Secretary Rogers said that the war powers bill: "reflects an approach not consistent with our constitutional tradition." The Secretary further felt that the "respective roles and capabilities" of the Executive and the Congress should be "left to the political process."

It is the failure of this approach which necessitates a war powers bill. The golden days of Senator Vandenberg have been obliterated by the Vietnam war.

The constitutional imbalance, which has reached such dangerous proportions and which is the prime factor behind this bill, is a recent development growing out of the last few decades. The United States emerged from World War II as the dominant world power—a role alien to all our previous national experience. The unique challenges arising from this new role were such that we slipped into a practice which ran counter to the genius of our Constitution and the underlying structure of our political system. This practice has concentrated the essential war power in the institution of the Presidency and left Congress little more than an appropriations and conformatory role. It has proved to be a most costly failure which has dangerously strained the fabric of our whole society.

Throughout our history it has been recognized that the essential conduct of foreign policy was a prerogative of the President. But until the United States emerged from World War II as the dominant power of the world, the President's foreign policy portfolio fas a relatively modest one, evolving only slowly in our history from the traditions established by President George Washington's admonition to beware of "foreign entanglements."

The Founding Fathers were deeply distrustful of "standing armies." At the time of the ratification of the Constitution, the U.S. Army consisted of a total of 719 officers and men. On the eve of the Civil War it was only 28,000 and in 1890 it was only 38,000. Even in 1915, the Army numbered less than 175,000. However, since 1951 the size of our "standing" armed forces rarely has dipped below 3,000,000 men. These forces under the President's command are equipped with nuclear weapons and submarines, intercontinental missiles, supersonic jets and they are deployed all over the world. A budget of more than $83 billion has been requested to support these forces in fiscal year 1973.

It is the covergence of the President's role of conducting the foreign policy with his role as Commander in Chief of the most potent "standing army" the world has ever seen that has tilted the relationship between the President and Congress so far out of balance in the war powers field. It is this convergence which has created the new situation requiring countervailing action by Congress to restore the constitutional balance.

EXPLANATION OF THE BILL

It is important to note that the provisions of this bill govern the use of the Armed Forces: "In the absence of a declaration of war by the Congress." In this bill we are dealing with undeclared wars—wars which have come to be called presidential wars because the constitutional process of obtaining congressional authorization has been short-circuited.

Undeclared wars are not a new phenomenon in our history. Our Armed Forces have been introduced in hostilities many more times in the absence of a declaration of war than have been pursuant to a declaration of war. The key problem for the Congress and our Nation, particularly in contemporary circumstances, is undeclared war, or presidential war, as epitomized by Vietnam. It is to this urgent, contemporary problem that S. 2956 addresses itself.

Section 1 of the bill contains its short title—the "War Powers Act."

Section 2 is a self-explanatory short statement of "purpose and policy," stressing its intention to "insure that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces of the United States in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances."

Section 3—along with section 5—is the core of the bill. Section 3 consists of four clauses which define the conditions or circumstances under which, in the absence of a congressional declaration of war, the Armed Forces of the United States "may be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances."

The first three categories are codifications of the emergency powers of the President, as intended by the Founding Fathers and as confirmed by subsequent historical practice and judicial precedent. Thus, subsections (1), (2), and (3) of section 3 delineate by statute the implied power of the President in his concurrent role as Commander in Chief.

The authority of Congress to make this statutory delineation is contained in the enumerated war powers of Congress in article I, section 8 of the Constitution, which I cited at the outset. Most importantly, the authority of Congress to make this statutory delineation is contained in the final clause of article I, section 8, granting to Congress the authority:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

REPELLING ARMED ATTACK ON THE UNITED STATES

Subsection (1) of section 3 confirms the emergency authority of the Commander in Chief to:

Repel an armed attack upon the United States, its territories and possessions; to take necessary and appropriate retaliatory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack.

It should be noted that this subsection authorizes the President not only to repel an attack upon the United States and to retaliate but also "to forestall the direct and imminent threat of such an attack." The inclusion of these words grants a crucial element of judgment and discretion to the President. While it was thought by some that the power to "forestall" was inherent in the power to "repel," it was decided to expressly include the forestalling power to avoid any ambiguity domestically or in the eyes of any potential aggressor. Its inclusion belies the allegation of critics that the bill is "inflexible."

Nonetheless, while the President clearly must apply his discretion and judgment to the implementation of this authority, it is by no means a "blank check." For the President to take forestalling action, the threat of attack must be "direct and imminent." Moreover, he must justify his judgment on this point under the mandatory reporting provisions contained in section 4. But, and this is the point to be emphasized, the judgment is his.

REPELLING ATTACK ON U.S. ARMED FORCES

Subsection (2) further defines the emergency power of the President:

To repel an armed attack against the Armed Forces of the United States located outside of the United States, its territories and possessions, and to forestall the direct and imminent threat of such an attack.

The authority contained in this subsection recognizes the right, and duty, of the Commander in Chief to protect his troops. Like subsection (1) it includes the authority to forestall a direct and imminent threat of attack, as well as to repel an attack. Clearly, just as the President would not have to wait until the bombs actually started landing on our soil to act against an attack upon the United States, similarly our forces would not have to wait until enemy bullets and mortars hit before they could react.

Nonetheless, it will be noted that the power to repel attacks upon the Armed Forces located outside the United States is less comprehensive in one respect than the power to repel attacks upon the United States itself. While the subsection contains the authority to repel and forestall, it does not include the separate and broader power to retaliate.

There are good reasons for this. First, it should be emphasized that the President could of course take retaliatory action if an attack upon our Armed Forces abroad was integral to an attack upon the United States. And he could do this respecting our NATO forces as part of his forestalling powers relating to an attack upon the United States. Nonetheless, the wording of this provision is meant to retain safeguards against wider embroilment resulting from incidental attacks upon U.S. forces, or attacks resulting from provocative actions by local U.S. commanders. Thus, for instance, an attack upon a Marine Guard at our Embassy in Nepal would not trigger an authority to retaliate by seizing the country. Likewise, for instance, a sneak attack on security guards at one of our airbases in Thailand would not trigger an authority to retaliate by launching search and destroy missions into Northern Laos.

PROTECTING U.S. CITIZENS ABROAD

Subsection (3) codfies that the authority of the President to rescue U.S. citizens and nationals abroad—and this would include foreign soil as ships or planes on or over the high seas. By defining the circumstance and procedures to be followed, this subsection is a conscious movement away from some of the excesses of 19th century gunboat diplomacy. The language of this subsection is as follows:

To protect while evacuating citizens and nationals of the United States, as rapidly as possible, from any country in which such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control; but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States, and shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country.

NATIONAL COMMITMENTS

Subsection (4) is perhaps the most significant part of the bill. For, while subsection (1), (2), and (3) codify emergency powers which are inherent in the independent constitutional authority of the President as Commander in Chief. Section 3(4) deals with the delegation by the Congress of additional authorities which would accrue to the President as a result of statutory action by the Congress and which he does not, or would not, possess in the absence of such statutory action.

The language of section 3(4) reads as follows:

Pursuant to specific statutory authorization, but authority to introduce the Armed Forces of the United States in hostilities or in any such situation shall not be inferred (A) from any provision of law hereafter enacted, including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act, or (B) from any treaty hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act. Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities. No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause (4); and no provision of law in force at the time of the enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

The key phrase in this subsection is contained in its initial five words: "Pursuant to specific statutory authorization." The rest of the subsection is an explanation, elaboration and definition of the meaning—for the purposes of the bill—of the words "pursuant to specific statutory authorization." in an important sense, this subsection gives lesiglative effect to Senate Resolution 85, the national commitments resolution adopted by the Senate on June 25, 1969, a vote of 70 to 16 which states:

That a national commitment by the United States to a foreign power necessarily and exclusively results from affirmative action taken by the executive and legislative branches of the United States Government through means of a treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment.

The significance of subsection (4) is multiple. First, it establishes a mechanism by which the President and the Congress together can act to meet any contingency which the Nation might face.

There is no way to legislate national wisdom, but subsection (4) does provide important protection to the American people by requiring that the Congress, as well as the President, must participate in the critical decision to authorize the use of the Armed Forces of the United States in hostilities, other than hostilities arising from such "defensive" emergencies as an attack upon the United States, our Armed Forces abroad, or upon U.S. citizens abroad in defined circumstances. It provides as much flexibility in the national security field as the wit and ingenuity of the President and Congress may be jointly capable of constructing.

Subsection (4) places a big responsibility upon the President, as well as the Congress. The initiative in generating "specific statutory authorization" to meet contingencies and developing crises may, in most instances, come from the President. As the conductor of foreign policy, with all the information and intelligence resources at his command, it will be incumbent upon him to present the case to the Congress and the Nation.

There is a clear precedent for the action anticipated in subsection (4)—the "area resolution." Over the past 2 decades, the Congress and the President have had considerable experience with area resolutions—some of it good and some quite unsatisfactory. In its markup of the war powers bill, the Foreign Relations Committee considered this experience carefully in approving the lan-

guage of subsection 3(4). The intent of the final clause of subsection (4) is to uphold the validity of three area resolutions currently on the statute books. These are: the Formosa resolution—House Joint Resolution 159 of January 29, 1955; the Middle East resolution—House Joint Resolution 117 of March 9, 1957, as amended; and the Cuban resolution—Senate Joint Resolution 230 of October 3, 1962.

The best known—and most controversial—of the area resolutions, the Tonkin Gulf resolution—House Joint Resolution 1145 of August 10, 1964—was repealed as of January 12, 1971.

The question may be asked: what is to guard against the passage of another resolution of the Tonkin Gulf type?

The answer is that any future area resolutions, to qualify under this bill as a grant of authority to introduce the Armed Forces in hostilities or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, must meet certain carefully drawn criteria—as spelled out in the language of subsection (4). The pertinent language is:

> Unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act . . .

In other words, any future area resolution must be a specific grant of authority which would contain a direct reference to the bill now under discussion. The phrase "exempts . . . from compliance with the provisions of this act" is included to insure that the precise intention of the grant of authority is clearly established with reference to the war powers bill. The exemption could of course establish other procedures—or it could reaffirm all, or part, of the provisions of S. 2956. The bill thus allows for as much flexibility with respect to handling of any developing crisis or sudden emergency as the Congress and the President may jointly deem prudent.

Clearly, both the President and the Congress will have much to do, following the passage of this bill. First, Congress will have to review closely the three area resolutions which are left standing by the provision of subsection (4). Legislation to terminate those resolutions has already been introduced.

As a first step in the mental attitude of partnership which will be brought about by this bill, the administration should review the world situation carefully and take the initiative in coming to the Congress with recommendations respecting the existing area resolutions—as well as recommendations for any new ones which the President may feel are needed for our national security.

As regards the three existing area resolutions which continue to qualify under subsection (4), the Nixon administration, in another context, has said it did not rely on the resolutions and has taken the following position:

> As a functional matter, [the area] Resolutions have no continuing significance in the foreign policy formulation process, and it is for Congress to determine whether they should be terminated or simply allowed to fade away.

With the new situation that would follow the adoption of the war powers bill, a new approach would be required of the Executive.

At this point, I should draw attention to the fact that requests for new authority, pursuant to subsection (4), do not qualify for the "congressional priority provisions" contained in section 7. However, it is contemplated that congressional consideration of new subsection (4) grants of authority can generally be undertaken in the absence of an imminent threat or emergency in a deliberative way, including committee hearings. The point here is to obviate a repetition of the unfortunate experience of the Congress with the Tonkin Gulf resolution, which it was later realized went through the Congress without enough inquiry in the respective committees and in the related floor debate, for it was confirmatory not plenary; and more a gesture of solidarity with the President than a decision on war by the Congress.

RENEWING CLOSE CONSULTATION

Not only must the Congress be prepared to play its role in the war powers area with wisdom and foresight—but with great responsibility.

And, an important new responsibility is also placed on the executive branch. Last minute "crunches" can be avoided by a renewal of the earlier practice of continuing close consultation between the executive branch and the relevant committees of Congress. The Executive will be obliged to make the Congress, again, its partner in shaping the broad, basic national security and foreign policy of the Nation well in advance of the exercise of the war power.

CONGRESSIONAL AUTHORITY AND PRESIDENTIAL FLEXIBILITY

Some have argued that seeking congressional authority to use the Armed Forces with respect to developing crisis situations would deprive the President of flexibility—or introduce ambiguity—in the conduct of foreign policy during crisis situations. It is said that the President would have to "telegraph his punches" and thus remove surprise from his diplomatic arsenal.

This charge does not stand up under scrutiny. First, the President would not be compelled or obliged to use the Armed Forces just because the Congress granted him the authority to do so. This could be made clear to the entire world through the public media facilities at the President's command, as well as through the diplomatic channels at his command.

Moreover, it is just not true, as some critics of the bill have alleged, that the passage of this legislation would inhibit the President's capacity to move elements of the fleet anywhere on the high seas. To give a specific example, there is nothing in the bill which would have affected the President's decision to move elements of the 6th Fleet into the eastern Mediterranean during the recent Jordanian crisis. The right of U.S. naval forces to operate freely anywhere in international waters would not be abridged by this bill. Moreover, the capacity of our Armed Forces to rescue U.S. citizens stranded or threatened on the high seas would not be restricted by the bill.

An important provision of subsection (4) is contained in its first qualifying clause (A). As stated in the committee report, the purpose of this clause is to overrule the Orlando against Laird decision of the second circuit court, which held that passage of defense appropriations bills, and extension of the Selective Service Act, constituted implied congressional authorization for the Vietnam war.

TREATIES

One of the most far-reaching aspects of subsection (4) is its provisions respecting treaties. Throughout the past two decades there has been continuing confusion, debate and controversy respecting a crucial phrase that is standard in our Nation's collective and bilateral security treaties; that phrase is that implementation of such treaties, as to involvement of U.S. Forces in hostilities, will be in accordance with the "constitutional processes" of the signatories.

In an important sense, subsection (4) defines "constitutional processes" for the first time, as it relates to treaty implementation by the United States. The definition of "constitutional processes" respecting treaty implementation is both negative and positive.

Subsection (4) makes a finding in law that no U.S. security treaties can be considered self-executing in their own terms. With respect to existing treaties the bill states:

> No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation. . . .

Additionally, the subsection states that authorization for introducing the Armed Forces in hostilities shall not be inferred:

> From any treaty hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act.

It is important to bear in mind that these negative findings with respect to treaties must be considered in conjunction with the authority of the President in subsections (1), (2) and (3). The authority contained in those subsections is in no way abridged or diminished by the negative finding on treaties per se.

Moreover, as the language of the subsection makes clear, the bill envisages the adoption of treaty implementation legislation, as deemed appropriate and desirable by the Congress and the President. Such implementing legislation would constitute the authority "pursuant to specific statutory authorization" called for by subsection (4).

There are two principal reasons for including these provisions with respect to our collective and bilateral security treaties. First, is to insure that both Houses of Congress must be affirmatively involved in any decision of the United States to engage in hostilities pursuant to a treaty. Treaties are ratified by and

with the consent of the Senate. But the war powers of Congress in article I, section 8 of the Constitution are vested in both Houses of Congress and not in the Senate—and President—alone. A decision to make war must be a national decision. Consequently, to be truly a national decision, and, most importantly, to be consonant with the Constitution it must be a decision involving the President and both Houses of Congress.

Second, the negative findings with respect to treaties is important so as to remove the possibility of a future issue of bitter contention such as arose with respect to the SEATO Treaty and the Vietnam war.

Treaties are not self-executing. They do not contain authority within the meaning of section 3(4) to go to war. Thus, by requiring statutory action, in the form of implementing legislation or an area resolution of the familiar type, the war powers bill performs the important function of defining that elusive and controversial phrase—"constitutional processes"—which is contained in our security treaties.

Subsection (4) contains one additional important provision. It states:

> Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

As explained in the committee report, the purpose of this provision is "to prevent secret, unauthorized military support activities." Senators conversant with the major debates of the past 5 years will recognize that this provision is designed to prevent a repetition of many of the most controversial and regrettable actions of the past two administrations in Indochina. For, we know that the ever deepening ground combat involvement of the United States in South Vietnam began with the assignment of U.S. "advisers" to accompany South Vietnamese units on combat patrols. Soon, such U.S. advisers were authorized to shoot, first in self-defense, and later, without restriction. And, in Laos, secretly and without congressional authorization, U.S. "advisers"—frequently members of the Armed Forces on "loan" to the CIA—have been deeply engaged in the war in northern Laos.

We now have the anomalous situation in Cambodia where, despite legislative prohibitions against the introduction of U.S. advisers, we find that Cambodian forces are being trained in South Vietnam and then are accompanied back to Cambodia by members of the U.S. Armed Forces who have been training them but who are now designated as members of the military equipment delivery team. So far, I am not aware of any actions by U.S. Forces in Cambodia which would violate the provision of the war powers bill which I am now discussing. However, the press is full of reports that Communist forces are active around Phnom Penh and may soon launch an attack on the capital city itself. In such circumstances, one is concerned whether the so-called military equipment delivery teams, whose members have been training the Cambodians a few miles across the border, are likely to become involved in combat actions of the sort this provision of the war powers bill is designed to prevent unless there is specific statutory authorization to do so.

The situation in Cambodia is, of course, a hypothetical one in the context of this bill which does not apply to the ongoing hostilities in Indochina. Nonetheless, it points up the weakness of some of the previous congressional efforts to achieve similar ad hoc restrictions through what I would call the appropriations route. Here, we find that semantic dexterity on the part of the Pentagon has created a loophole which gets around the best intent of Congress. One can well question the Pentagon's insistence that it is not defying the statutory ban contained in H.R. 19911—the Cooper-Church amendment which states:

> None of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, *or to provide United States advisers to or for Cambodian military forces in Cambodia.*

CONGRESSIONAL AUTHORITY FOR PRESIDENTIAL WARS

The approach taken in the war powers bill reverses the situation by placing the burden on the Executive to come to Congress for specific authority. The sponsors of the bill believe that this provision will provide an important national safeguard against creeping involvement in future Vietnam-style wars. The danger of United States involvement in wars over the next decade at least would appear to be greater as regards small, "limited" brushfire, undeclared wars of obscure beginnings—such as the ones which have wracked Southeast Asia for the past several decades—than the danger of a big conventional war.

The State Department has raised the charge that this provision of S. 2956 would require the disbandment of NATO's unified command. I believe this to be a faulty and distorted reading of the legislation. It is certainly a reading which is in direct contradiction of the legislative purpose of the authors and sponsors of the bill, and in normal operation it contradicts the plain text of the bill. However, should any legitimate doubts persist on this point, following the Senate debate, the Senate could pass a specific statutory authorization for members of the Armed Forces of the United States to continue to participate fully in the NATO unified command. I would be glad to sponsor and introduce myself a joint resolution to this effect, if it should be considered desirable. Hence, it is important that we guard against any weakening of this important provision by irrelevancies which would reopen the flood gate to future Vietnams.

Section 4 of S. 2956 requires the President to report "promptly" in writing to both Houses of Congress any use of the Armed Forces covered by section 3 of the bill. The provisions of this section are clear and simple. In his report to Congress, the President is required to include—

> A full account of the circumstances under which . . . [he has acted], . . . the estimated scope of such hostilities or situation, and the consistency of the introduction of such forces in such hostilities or situation with the provisions of section 3 of this Act.

In addition, the President is required to make periodic, additional reports so long as the Armed Forces are engaged in circumstances governed by section 3. Such additional reports shall be submitted at least every 6 months.

It will be noted that the President is required to report "promptly." This word has been used in preference to "immediately" or a possible specific time limit such as 24 hours. The important thing is that the report must be prompt but it must also be comprehensive. It might take a few days for the executive branch to assemble all the facts and reports from the field, as well as to assemble the various intelligence reports and, most importantly, to prepare an informed judgment on the "estimated scope of such hostilities."

What we are looking for here is a full and accurate report of events, combined with an authoritative statement by the President of his judgment about the direction in which the situation is likely to develop. The Congress can act intelligently and responsibly only when it has the necessary information at hand. We cannot allow a repetition of the experience we had with respect to the Tonkin Gulf resolution, where we later learned that we were provided with incomplete, even misleading and inaccurate reports of what had actually occurred.

It is important to bear in mind that the reporting requirements of the bill apply independently of the provisions of sections 5, 6 and 7. There are several reasons for this, despite the fact that there inevitably will be a close de facto operational connection between the President's report under section 4 and the subsequent actions of Congress under sections 5, 6, and 7.

First, it should be clear that the President's mandatory report is not to be considered a request for an extension of authority as might be granted subsequently under section 5. Such a request can only be introduced by a Member of Congress.

Second, it is entirely possible that even a majority of the actions taken under the President's direction pursuant to section 3 will be short-lived, one-shot actions completed well within the 30-day time period, and thus requiring no extension in time of the authority spelled out in section 3.

THE 30-DAY AUTHORIZATION PERIOD

The committee report characterizes section 5 as "the heart and core of the bill." Taken in conjunction with section 3, it is just that. It is the crucial embodiment of congressional authority in the war powers field, based on the mandate of Congress enumerated so comprehensively in article I, section 8 of the Constitution. Section 5 rests squarely and securely on the words, meaning and intent of section 8, article I and thus represents, in an historic sense, a restoration of the constitutional balance which has been distorted by the practice of recent decades.

Section 5 provides that actions taken under the provisions of section 3—

Shall not be sustained beyond thirty days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless the continued use thereof in such hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof.

Section 5 resolves the modern dilemma of reconciling the need of speedy and emergency action by the President in this age of instantaneous communications and of intercontinental ballistic missiles with the urgent necessity for Congress to exercise its constitutional mandate and duty with respect to the great questions of war and peace.

The choice of 30 days, in a sense, is arbitrary. However, it clearly appears to be an optimal length of time with respect to balancing two vital considerations. First, it is an important objective of this bill to bring the Congress, in the exercise of its constitutional war powers, into any situation involving U.S. forces in hostilities at an early enough moment so that its—Congress—actions can be meaningful and decisive in terms of a national decision respecting the carrying on of war. Second, recognizing the need for emergency action, and the crucial need of Congress to act with sufficient deliberation and to act on the basis of full information, 30 days is a time period which strikes a balance enabling Congress to act meaningfully as well as independently.

It should be noted further, that the 30-day provision can be extended as Congress sees fit—or it can be foreshortened under section 6. The way the bill is constructed, however, the burden for obtaining an extension under section 5 vests on the President. He must obtain specific, affirmative, statutory action by the Congress in this respect. On the other hand, the burden for any effort to foreshorten the 30-day period rests with the Congress, which would have to pass an act or joint resolution to do so. Any such measures to foreshorten the 30-day period would have to reckon with the possibility of a Presidential veto, as his signature is required, unless there is sufficient congressional support to override a veto with a two-thirds majority.

The issue has been raised, quite properly, as to what would happen if our forces were still engaged in hot combat at the end of the 30th day—and there had been no congressional extension of the 30-day time limit.

The answer is that the President, in his capacity as Commander in Chief and in accordance with his duty as Commander in Chief to protect his troops, would not be required or expected to order the troops to lay down their arms.

The President would, however, be under statutory compulsion to begin to disengage in full good faith to meet the 30-day time limit. He would be under the injunction placed upon him by the Constitution, which requires of the President that—

He shall take care that the laws be faithfully executed.

The 30-day provision contained in section 5 thus assumes that the President will act according to law. No other assumption is possible unless we are to discard our whole constitutional system. So long as the President is acting in good faith in acting to disengage, there would be no constitutional confrontation over fighting by our forces after the 30-day period—or any other period established by statute.

Section 6 of the bill establishes that Congress may, through statutory action, foreshorten the 30-day provisions of section 5. Clearly, such action could only happen in most extraordinary circumstances wherein a President might act in blatant opposition to the national will or the national interest.

ANTIFILIBUSTER SAFEGUARD

Section 7 is an important provision of the bill which establishes strict procedures to assure priority congressional action to extend, or foreshorten, the 30-day time period as provided in sections 5 and 6. The provisions of section 7 are included to remove the possibility that action in this regard could be prevented or delayed through filibuster or committee pigeonholing.

It is important to note again that requests for authority under subsection (4) of section 3 would not qualify for the priority consideration procedures established in section 7. In other words, a Presidential request for an area resolution of the type contemplated in section 3, subsection (4) would not trigger the provisions of section 7. Such requests would be considered by Congress under normal procedures. Section 7 would apply only with respect to measures which would extend—or foreshorten—measures already previously made statutory under section 3.

To give an example, the Tonkin Gulf resolution could not have been shoved through the Congress under the priority consideration procedures of section 7. On the other hand, hypothetically, if U.S. Armed Forces were fighting in Mexico, pursuant to specific statutory authorization under section 3, to resist an invasion by the Soviet Union or Cuba, a resolution to extend the 30-day authorization period would qualify for the priority consideration procedures, if sponsored or cosponsored by one-third of the membership of the House in which it was introduced.

Finally, it should be noted that an important measure of flexibility has nonetheless been retained in section 7. Its strict, almost instant, provisions can be modified in any particular instance by a majority vote of the members of the House in which it is being considered. This is the meaning of the phrase—

Unless such House shall otherwise determine by yeas and nays.

The significance of this "escape clause" is that in situations which clearly do not constitute a national emergency, the Congress can proceed as it may decide to, upon majority vote.

Section 8 contains a standard separability clause which simply provides that if any provision of the bill should be held invalid, this would not effect the validity of the rest of the bill.

Section 9 provides that—

This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act.

The purpose of this section is very clear and straightforward. The bill is not intended to apply retroactively to the Vietnam war should that war still be in progress when this act becomes effective. I am confident that the wisdom of this decision will be evident to most Senators.

CONCLUSION

The real question—and the State Department admits it—is, independently of Congress, "to what extent the President has the power to use the Armed Forces by virtue of his role as Chief Executive, as Commander in Chief, and in the conduct of foreign relations." In practice, the question has been answered over the past several decades, in effect, by no limits being placed on this alleged power of the Commander in Chief, so that the President has been able to commit the people to extended war. All he has asked from Congress is that it provide the money and the men he wants to pursue his policies. But this was almost the doctrine of Charles II or Louis XVI—not that any American President so intends it, but he is driven to it by some awful logic if this claim of power by the Executive is acquiesced in by Congress and the Nation as valid under the Constitution. It is not valid if Congress chooses to exercise its power under the "necessary and proper" clause to define by law the President's and its own role in going to war. When the President's authority is so defined, as it will be if this War Powers bill becomes law, then the issue of authority is determined in an authoritative way, and, I have little doubt, will be carried out to the best of his ability in good faith by any American President.

There is no intention or design to deprive the President of authority essential to the security of our country. But the real point we make is, having made that decision, then what? Is that forever? When does it become a matter in which we can join either in dissent or assent?

And when action is taken to repel a sudden attack, to use the words of the Founding Fathers, what is the bracket for that action, and when does it become a war to which the United States is committed, and in which the Congress ought to have a share before we go that route?

That is a very different thing from reacting to a distinct situation as required in the best judgment of the President. But we do not deprive him of the power to implement his best judgment. We do set a bracket. That is 30 days. There is no magic in that figure. The important thing is that at some stage it ceases to be repelling or retaliating against an attack and becomes a basic commitment to war by the United States. That requires the concurrence of Congress. The War Powers Act seeks to insure that there can be no basic commitment to war without the

concurrence of Congress, as the Constitution clearly mandates.

May I say that this bill is a composite of wisdom. It has had affirmative and activist contributions in a prime sense by the distinguished Senator from Mississippi (Mr. STENNIS), the distinguished Senator from Missouri (Mr. EAGLETON), the distinguished Senator from Virginia (Mr. SPONG)—who is now in the Chamber and is floor managing on the part of the majority and has given the bill a remarkable degree of study and attention—by the distinguished Senator from Texas (Mr. BENTSEN), the distinguished Senator from Ohio (Mr. TAFT), and other Senators.

They have really devoted themselves to enabling us, as a Senate, to put our best foot forward. Having gone through the preliminary draft and processing, the bill was then subjected to the very fine minds of members of the Committee on Foreign Relations. The ultimate product is the product, of course, of the members of that committee who have worked with us and passed on the draft with the Senators I have already mentioned, and have now brought it to the floor of the Senate.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SPONG. 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. SPONG. Mr. President, before I begin, I should like to commend the Senator from New York for his intiative in this legislation. The Committee on Foreign Relations has had occasion during the past year to consider at least five or six resolutions dealing with the question of the war powers, but it was the Senator from New York who in 1970 introduced the first bill of this nature. In doing so, I think he directed the attention of the Senate and the Nation to the necessity for giving consideration to this very important area of constitutional authority.

The Senator from New York has very ably opened this debate today. Regardless of what type of legislation we end up with in this body, it was he who initiated the collective effort that has resulted in this bill being before the Senate today.

Mr. JAVITS. If the Senator will yield, I thank him for his generosity. Without the gifted intervention of the Senator from Virginia, the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. TAFT), the Senator from Texas (Mr. BENTSEN), and others, I could have gotten absolutely nowhere. Also, there was the creative genuis of the Committee on Foreign Relations, of which the Senator from Virginia is a member, in actually putting together the final package. The Senator will recall that the committee made very extensive changes in what I proposed.

Mr. SPONG. I thank the Senator from New York.

Mr. President, I am pleased to be a cosponsor of the war powers legislation currently under consideration in the Senate. I believe it is among the most important legislation to come before the 92d Congress.

Constitutionally, this legislation is necessary in order that we might restore the war power to the shared power status which it was meant to have by the framers of the Constitution. It is necessary to sustain the balance of powers between the legislative and executive branches, which is a foremost principle of our governmental tradition.

Pragmatically, it seems only reasonable that the legislative body should have a major role in determining when to commit troops to conflict on foreign soil. This is especially true in view of the divisiveness which the current conflict in Southeast Asia has engendered. The representative body of this government has a responsibility to participate in future troop deployment decisions in order to seek to avoid in upcoming years unfortunate involvements and the accident of involvement, either of which could divide our people and threaten the stability of our Nation.

Constitutionally, the war power is a shared power.

Article I, section 8 of the Constitution gives to Congress power to provide for the common defense; to declare war; to raise and support—for no more than 2 years at a time—an Army and Navy; to make rules which will regulate and govern the military forces; to provide for calling out the militia to enforce laws, suppress insurrection and repel invasion.

Furthermore, the same article and section grant to Congress the authority to:

> Make all laws which shall be necessary and proper for carrying into execution the foregoing powers, "and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

As Prof. Alexander Bickel of the Yale University Law School noted in hearings on war powers legislation, the part of the necessary and proper clause underlined [quoted] above:

> Is of the greatest consequence when it comes to issues of foreign policy and of war and peace.

Article II, section 2 describes the President as:

> Commander in Chief of the Armed Forces as well as the State Militia, when it is called into service for use by the Federal Government.

Admittedly, the provisions relating to war powers are rather brief in themselves. Thus, it is necessary to review the debates of the Constitutional Convention and subsequent legal interpretations in order to understand more fully the war powers.

As is well known, the original draft submitted to the Constitutional Convention of 1787, consistent with the Articles of Confederation, gave to Congress the power to "make war." James Madison's notes on the debate over this particular clause provide insight into the intent and near unanimity of the framers. In the course of those debates, Charles Pinckney of South Carolina expressed his belief that the Senate would be the ideal depositary of the war power inasmuch as each State had an equal interest in the security of the Nation, and because the Senate was better "acquainted with foreign affairs, and most capable of proper resolutions."

On the other hand, Pierce Butler, also of South Carolina, believed Senate deliberations to be too slow and cumbersome. He preferred vesting the war power in the President, who "will not make war but when the Nation will support it."

As to the extent of authority the President should possess, Mr. Madison and Mr. Elbridge Gerry of Massachusetts moved to insert "declare" in the place of "make" war, leaving to the Executive the power to repel sudden attacks. Although this change was objected to as providing the President with the authority to commence war, it was agreed to by a vote of 8 to 1.

Later, in 1789, Thomas Jefferson, evidently assured that the warmaking powers of the President had been limited, wrote to Madison:

> We have already given in example one effectual check to the Dog of War by transferring the power of letting him loose from the executive to the legislative body, from those who are to spend to those who are to pay.

The foregoing discussion suggests two things. One, there can be no question that Congress was to have the right to initiate hostilities. Two, there is a distinction between making war and repelling sudden attacks, between offensive and defensive actions.

A careful reading of the Federalist confirms the latter point. Involvement of the Nation in any type of war, other than one of self-defense, was to be solely the responsibility of Congress. If the Nation were suddenly attacked or invaded, the President would respond to repel the attack, but Congress would decide the nature of the action to follow—action which should come only after a collective judgment had been made by those directly elected as representatives of the people.

The constitutional power of the executive to repel sudden attacks without congressionial authorization has always been acknowledged by the Court. This power to wage defensive war was expanded in Martin against Mott when Justice Story said:

> The power thus confided by Congress to the President, is, doubtless, of a very high and delicate nature. . . . But it is not a power which can be executed without a correspondent responsibility. It is, in its terms, a limited power, confined to cases of actual invasion, *or of imminent danger of invasion*. If it be a limited power, the question arises, by whom is the exigency to be judged of and decided? . . . We are all of opinion, that the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself, and from the manifest object contemplated by the act of Congress. The power itself is to be exercised

upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union. (Emphasis added.)

The view that once the country is attacked, the President may take action without further authorization from Congress, received approval during the War Between the States when, in the Prize cases, the Supreme Court held valid President Lincoln's proclamation of a blockade of the South. Of the President's powers, the majority opinion said:

He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority.

In United States against Sweeny the Supreme Court said that the purpose of the Commander in Chief clause:

Is evidently to vest in the President the supreme command over all the military forces—such supreme and undivided command as would be necessary to the prosecution of a successful war.

The case most often cited as a restriction upon the President's war powers is Youngstown Sheet & Tube Co. against Sawyer. Justice Jackson said that the President "has no monopoly of 'war powers,' whatever they are." This decision was prompted by President Truman's seizure of the steel plants during the Korean war—an action which the Supreme Court held invalid. It should be noted, however, that this case questioned the President's power over a domestic issue—labor management relations—rather than the conduct of hostilities or the commitment of troops.

A natural corollary of the power to repel invasions is the power to protect against imminent attack. Again, as Professor Bickel noted during committee hearings:

The "sudden attack" concept of the framers of the Constitution denoted a power to act in emergencies in order to *guard against the threat of attack, as well as agains the attack itself,* when the threat arises, for example, in such circumstances as those of the Cuban missile crisis of 1962. (Emphasis added.)

A similar corollary is that the President can protect U.S. forces lawfully stationed abroad. In discussing U.S. troops attached to NATO, for example, Professor Bickel said:

I would think that any attack that came which he (the President) considered was in fact or carried the threat of an attack on our forces in Europe—which, I take it, was one of the reasons we have kept forces in Europe, this screen idea that they represent—or any attack that, even without there being forces there, in which he found implicit the threat of an attack on us, he could react to.

Turning to other judicial interpretations of the war powers, one finds that the Supreme Court has not often taken the opportunity to define or limit the warmaking power. There is little disposition by the Court to consider "political questions," and one may safely predict that if balance is to be re-created in in the war-making process, it will be without benefit of judicial guidance.

The Supreme Court, as we know, has denied certiorari in many cases challenging the validity of the war in Vietnam. It left standing a ruling by Chief Justice Burger, then Judge of the Circuit Court of Appeals for the District of Columbia, in which the Court stated:

The fundamental division of authority and power established by the Constitution precludes judges from overseeing the conduct of foreign policy or the use and disposition of military power; these matters are plainly the exclusive province of Congress and the Executive.

There are, however, decisions that should be noted—most of them in the early years of the Nation. In Penhallow against Doane the Supreme Court suggested that the war power was not dependent upon the specific provisions in the Constitution.

In Bas against Tingy, the Court held that Congress could declare war as a public or perfect war or as a limited or imperfect war, a thought expounded a year later in Talbot against Seeman when Chief Justice John Marshall wrote:

The *whole powers* of war being, by the Constitution of the United States, vested in Congress, the *acts of that body alone* can be resorted to as our guides in this inquiry. It is not denied, nor in the course of the argument has it been denied, that *Congress may authorize general hostilities,* in which case the general laws of war apply to our situation; or *partial hostilities,* in which case the laws of war, so far as they actually apply to our situation, must be noticed. (Emphasis added.)

In Little against Barreme, the Court held that President John Adams was limited as Commander in Chief by the restrictions enforced by Congress. The three cases mentioned above all arose as a result of the undeclared naval war with France. In these opinions, the Court observed that Congress was expected to play the predominant role in the initiation and prosecution of war. The opinions complement views of the warmaking powers as expressed by the writings of the Framers of the Constitution.

The few cases concerning the war powers heard in later years have, for the most part, tended to strengthen the hand of the Executive and broaden his powers. A large number of the military actions not involving a formal declaration of war have concerned the protection of the lives and property of citizens of the United States.

In Durand against Hollins, the Court sustained President Pierce's order in 1854 to bombard Greytown, Nicaragua, because of the refusal of local officials to pay reparations for an attack upon the American consul.

In the Slaughter House cases, the Court said in 1873:

Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States.

Other cases have sustained the right of the President to use the Armed Forces abroad for the protection of American lives and property. These precedents probably aided President McKinley in his decision to send troops to China without congressional authorization in the Boxer Rebellion of 1900–01.

It is of interest that President Eisenhower's justification for sending troops to Lebanon in 1958 was his inherent constitutional power to protect American lives and property, rather than the Middle East resolution of 1957. Protection of lives and property was likewise the supposed basis for President Johnson's dispatching of Marines to the Dominican Republic in 1965.

From the foregoing discussion, it is possible to conclude that there are certain prerogatives which constitutionally belong to the Congress and to the President. The Congress has the authority to declare war, to initiate hostilities. The President may act to repel an invasion, to protect against an imminent threat of invasion, to protect U.S. forces stationed abroad, to protect against an imminent attack on those forces and, in certain cases, to protect U.S. citizens abroad and their property. A reaffirmation of these prerogatives is included in the bill, as the Senator from New York (Mr. JAVITS) has explained.

For those who would argue that the President has war powers in addition to those enumerated in the bill, there are generally two bases for such a contention.

One basis is the executive power of the President. Article II, section 1 of the Constitution reads as follows:

The executive power shall be vested in a President of the United States of America.

As astute a scholar as the late Edward S. Corwin has asked whether this represents a grant of power or simply a designation of office, and the question has never been resolved. I would, however, argue that the specific grant of authority to Congress to initiate hostilities abroad would preclude the use of the executive power" argument as a basis for the President's engaging in hostilities, other than those specified in the bill in the absence of congressional authorization.

A second basis which is sometimes utilized by those arguing that the President possesses war powers in excess of those mentioned in the bill is the Supreme Court decisions in United States against Curtiss-Wright Corp., supra. In the Curtiss-Wright case, Professor Bickel correctly summarized the findings for the committee as follows:

The eloquent assertions of independent Presidential power in the "vast external realm," which was Justice Sutherland's phrase, which were largely dicta, were largely restricted to statements that the President alone can "speak or listen as a representative of the Nation;" that he alone negotiates treaties, and that the Senate cannot intrude, although it must give advice and consent ultimately; that the President has "plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations," which in context must be taken as a restatement of his role as chief spokesman and chief listener, especially since the court added that the President's powers "must be exercised in subordination to the applicable provisions of the Constitution;" and that the President, and not Congress, has the better opportunity of knowing the conditions in foreign countries, because the President has his agents, and is better able to maintain secrecy. That was all. *Nothing about powers to go to war, or to use the armed forces without restriction.*

Thus far, I have dealt with very specific situations: Congress declaring war, the President's responding to an attack or to an imminent attack. In reality, however, these situations have occurred infrequently in our history. Congress has declared war only five times. Depending on how they are counted, however, the President has committed U.S. troops to hostilities outside the United States without congressional authorization 100 to 110 times.

As Prof. Henry Steele Commager of Amherst College noted in committee hearings, most of these interventions were of limited character, and almost in every instance Congress was in session and available for consultation. In general, however, Congress has not been consulted, and often not even advised, of actions taken. And, while most of the military interventions undertaken by Presidents have been of limited duration, certain actions of the Vietnam war have not fallen into that category.

Thus, it is important to ask whether the Constitution mandates a role for Congress in the making of decisions to commit military forces absent a declaration of war. I believe that it does.

First, a number of early Supreme Court decisions suggest that there are situations of war in which war has not actually been declared that there can be varying types or degrees of war. Both aspects of this question are discussed in the Eliza case—1800—as indicated by the following quotes, which were included in a legal brief prepared by the staff of the Senator from New York and printed in the hearing record:

Justice WASHINGTON. It may, I believe, be safely laid down, that every contention by force, between two nations, in external matters, under the authority of their respective governments, is not only war, but public war. If it be declared in form, it is called solemn . . . and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other, in every place and under every circumstance . . . But hostilities may subsist between two nations, more confined in its nature and extent; being limited as to places, persons and things; and this is more properly termed imperfect war; because not solemn, and be*cause those who are authorized to commit hostilities act under special authority, and can go no further than to the extent of their commission.*

Justice CHASE. *Congress is empowered to declare a general war, or Congress may wage a limited war; limited in place, in objects, and in time.* If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli*, forming a part of the law of nations; but *if a partial war is waged, its extent and operation depend on our municipal laws.*

Justice PATERSON. The United States and the French republic are in a qualified state of hostility . . . *As far as Congress tolerated and authorized the war on our part so far may we proceed in hostile operations.*

Distinctions between different types of war were also mentioned in early cases, Bas against Tingy and Talbot against Seeman, which I discussed earlier.

A particularly significant aspect of these cases is that although they recognized that there were situations of war in which war had not been declared and although they recognized the existence of different types or degrees of war, they did not view as modifying or changing the constitutional power of Congress to declare war.

Second, from a somewhat more practical level, it is difficult, if not impossible, for the Congress to carry out its constitutional mandate to declare war, to determine when U.S. troops shall initiate hostilities abroad, if it does not have some means of influencing the deployment of troops, when hostilities are likely. Actions to deploy troops and position the Army and Navy can—and indeed have—rendered somewhat ineffective the power to declare war. Thus, if Congress is to reactivate its constitutional responsibility in this area, it must adopt the procedures which will give it a role in those circumstances which would necessarily or likely lead to war.

The "necessary and proper" clause as mentioned by both the Senator from New York (Mr. JAVITS) and the Senator from Missouri (Mr. EAGLETON) in their remarks, permits the Congress to enact such legislation. As Prof. Richard B. Morris of Columbia University noted in hearings before the committee:

Since Congress was given, under the Constitution, the right to declare war, it has the right to pass enabling legislation to indicate just what war is.

In other words, Congress has the right to pass legislation which will enable it to carry out its constitutional responsibility.

But the necessary and proper clause goes even further than this. In addition to permitting Congress to make the laws necessary and proper for implementing its own powers, it is authorized to make laws necessary and proper for carrying into execution "all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

Thus, as William D. Rogers, of the Arnold and Porter law firm, noted in committee hearings, Congress "has had the authority under the necessary and proper clause to lay down legislation with respect to the exercise of the President's Commander in Chief power."

There are Court opinions which would appear to sustain this conclusion. The quotes from the Eliza case mentioned earlier include references to "authorizations" and "extent of commission." The Flying Fish decision, 1804—suggested that the President is limited in the exercise of war powers by the restrictions imposed by Congress. The Prize Cases, 1863—insisted upon congressional authorization as the basis for Presidential war powers. Ex Parte Milligan, 1863—may be interpreted as suggesting that some war powers cannot be granted to the President without congressional authorization.

Furthermore, in the Youngstown Sheet & Tube Co. against Sawyer, 1952—Justice Clark cited the Flying Fish opinion as the basic, general judicial pronouncement on the allocation of powers between Congress and the President. In the Youngstown decision, Justice Clark noted:

(I)n the absence of . . . action by Congress, the President's independent power to act depends upon the gravity of the situation confronting the nation . . . (but) where Congress has laid down specific procedures to deal with the type of crisis confronting the President, he must follow those procedures in meeting the crisis.

Thus, the pending legislation is consistent both with Congress' authority to enact enabling legislation to permit it to carry out its constitutional function to declare war and to prescribe legislative procedures for the Executive department to carry out its constitutional functions. As Professor Morris also noted, "there is a long history of Congress exacting a certain measure of Executive accountability in legislation."

Mr. President, in previous statements on this legislation, I have noted that Congress cannot modify the Constitution by the passage of legislation to redefine the war powers; it cannot by passing a law either add to or diminish the powers which were ascribed either to the President or to Congress by the Constitution.

But Congress can, by the adoption of appropriate legislation, serve notice on the President—any President—that it intends to use the war-making powers which were granted to it by the Constitution. And, Congress can establish the structures which will facilitate legislative-executive exercise of the war powers which each has been granted and legislative-executive cooperation in a field which so deeply affects the future of all the American people.

The U.S. involvement in Korea and in Vietnam has meant the commitment of a quarter to a half million young men to military actions on foreign soil thousands of miles from home. There may, unfortunately, be cases in the future when our servicemen will again have to be committed in that number. But, should those circumstances arise, I believe our Nation would be far better off to have guidelines and a process for deciding whether or not to make such a commitment. I believe our Nation would be far better off to have a decision resulting from deliberations in both the legislative and executive branches of the Government, as envisioned by the authors of the U.S. Constitution.

For these reasons, it would be helpful to have legislation which spells out the constitutional authority of the President alone to act militarily. Certainly, this authority includes the power to repel a sudden or imminent attack on the U.S. and its forces, to carry out certain operations once hostilities are underway and, in most circumstances, to act to protect the lives of American nationals living abroad.

But, I believe that it would also be helpful to specify the role expected—and indeed, constitutionally required—of our representatives in Congress, especially insofar as an initial commitment to hostilities is concerned. And I believe it would be helpful to have a set of procedures for facilitating the exercise by both the executive and legislative branches of the war powers which the Founding Fathers granted to each.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. SPONG. I yield.

Mr. JAVITS. Mr. President, I wish to thank the Senator very much for this statement. I wish to call to the attention of the Senate the erudition in the

cases, and the applicability of the cases to the constitutional interpretations which we seek in this legislation, the most extraordinary gifted effort which the Senator from Virginia (Mr. SPONG) has made, and which is the subject of the law journal article he wrote. I think it is a major contribution to the debate. It is very much in character with the elevated level which I hope this particular legislation will enjoy throughout its consideration in the Senate.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. JAVITS. I suggest to the Senator from Kentucky that the Senator from Wyoming has been waiting to address the Senate. I gather he is under some time pressure, but if he does not intend to speak too long I would suggest that he yield to the Senator from Kentucky for 3 minutes.

Mr. McGEE. Yes, indeed. I am happy to yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOPER. Mr. President, I thank the Senator from New York and the Senator from Wyoming for their courtesy. I have filed individual views which were printed in the report of the Committee on Foreign Relations. I ask unanimous consent that my individual views may be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. COOPER. Mr. President, I rise to congratulate my colleague, the distinguished Senator from New York (Mr. JAVITS) first, for his scholarly and informative speech, sustained by eminent authorities, its good judgment, study, and precision with which all of us have become so familiar, as characteristic of the Senator's work. He engaged in a Herculean task in the development of the bill and it grew from his initiative. It was supported by the distinguished junior Senator from Virginia (Mr. SPONG), whom I also congratulate for his speech and for his contributions, and also the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. EAGLETON), and others.

However, I think we would all agree that it was the initiative, the continued force and drive, and the direction of the Senator from New York (Mr. JAVITS) which has brought this historic bill before the Senate. I believe the measure will have, and that it should have, full discussion and debate. It is most important that the Congress delineate and codify the separate warmaking power of the President and the Congress, a power which can claim the resources of our country, the material, and more important, the human resources, those who must fight.

Those who testified in the hearings, cited by the Senator from New York, and the references of the Senator from Virginia, to comments made by those who wrote our Constitution, provide an historic and solid base for our work. The experience of past years the ways we have become engaged in wars, also support and sustain the need for the bill which has been laid before the Senate.

I am sure that all of us who have studied the measure and thought about it have some questions, and I know that the distinguished Senator from New York would expect questions and he would want them to be fully considered and debated. I have several questions I wish to note today, and which I will elaborate on later during the debate.

I have raised a question, in my individual views, relating to the 30-day period. It seems to me that if the President acts constitutionally, under the terms of the War Powers Act, and the precedents we have studied and known, in taking action to repel attacks upon our forces or our country, on the first day, and those same circumstances were still in force on the 30th day or thereafter, he could not be deprived or relinquish his constitutional right. He could not do so, because of his constitutional right as defined in this bill and precedents, and also because it would be his duty under the Constitution to protect our country and our forces.

But I do not intend at this time to offer an amendment to strike the 30-day provision, because I think, as the Senator from New York (Mr. JAVITS) has so properly and fairly said, the bill provides ample discretion to the President. While he must address himself to the bill enacted by the Congress and must take it into consideration, I believe that if he finally determines that such action as he may take does not extend beyond what the bill describes as his constitutional power to protect the country, or our forces, he would not be constitutionally precluded.

There are two other portions of the bill about which I have reservations.

One is the section dealing with the assignment of our Armed Forces abroad, particularly with respect to NATO, which I will discuss next week.

Another relates to the treaties to which we have become a signatory since World War II—a large number of them, affecting about 42 countries. I find myself thoroughly in accord with the Senator from New York, on his central proposition that they are not self-executing.

I have argued for years that the "constitutional process" specified in the treaties means the joint action of the President and the Congress and I believe this is required in all cases except those of imminent danger. But if a situation of imminent danger to our forces or our country should occur by an attack on a treaty partner, then I think the President would have the authority through "constitutional processes"—his constitutional power—to take necessary steps to defend our men or our country.

I do not want to delay other speakers. I will speak in more detail on these issues next week. I have wanted to emphasize that the bill is necessary legislation, first, because we should not become engaged in wars unless it is clear that we must go to war to protect our national security, our forces, and our country, particularly when the engagement in any war might lead to the use of nuclear weapons, which would destroy our civilization as we know it.

This is a bill of the greatest importance, and I again want to give my thanks, as one individual Senator, to the great initiative and undertaking of the Senator from New York (Mr. JAVITS) and his colleagues who have worked so wonderfully on this bill.

EXHIBIT 1

INDIVIDUAL VIEWS OF SENATOR JOHN SHERMAN COOPER

I submit by individual views in order to join with others in a deserved tribute to Senator Javits for his leadership and magnificent work in developing and presenting to the Senate the historic legislation embodied in S. 2956. As the Report so properly states, much credit should go to other members of the Senate, whom the Report names, who have submitted bills and their views upon the purpose of S. 2956 "to make rules governing the use of the armed forces of the United States in the absence of a declaration of war by the Congress". And, as the Report states, great credit is due Senators Stennis, Spong, and Eagleton for their active participation with Senator Javits in the final development of the bill.

I desire also to raise some questions about the provisions of the bill and about one theme of the Report, excellent and comprehensive as it is.

Senator Javits and his co-workers have done a remarkable and invaluable work in codifying the constitutional powers of the President and the Congress respecting the engagement of the armed forces of the United States in war. Assisted by the testimony and views of eminent constitutional authorities, S. 2956 may be the most authoritative and incisive delineation of these powers.

Despite my support of the bill, I have difficulty with Sections 5 and 6 which read as follows:

THIRTY-DAY AUTHORIZATION PERIOD

SEC. 5. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act shall not be sustained beyond thirty days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless the continued use thereof in such hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof.

TERMINATION WITHIN 30-DAY PERIOD

SEC. 6. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act may be terminated prior to the thirty-day period specified in section 5 of this Act by an Act or joint resolution of Congress.

The Committee Report, quoting the late Justice Robert H. Jackson's concurring opinion in *Youngstown Sheet and Tube Company* v. *Sawyer*, 343, U.S. 579, states there is a "zone of twilight" between the distinct areas of the Presidential and Congressional war powers. I believe this statement, reinforced by many authorities, to be correct and that it is impossible to determine in every case the exact limits of the President's power to engage the armed forces of the United States in hostilities.

For this reason I doubt that the Congress has the authority to limit the exercise of Presidential authority to an exact term, such as the "30 days" prescribed by Sections 5 and 6 of the bill. If the President's exercise of authority is constitutional under Article II, Section 2 of the Constitution, that is—

"The President shall be Commander in Chief of the Army and Navy of the United States and of the Militia of the several States, when called into the actual service of the United States—"

I do not believe S. 2956—a statute—could prevail over his constitutional authority if

he should determine that a period of time longer than 30 days would be necessary to carry out his responsibility as Commander-in-Chief of the armed forces of the United States to protect the armed forces, and the security of our country. My study of the powers of the Congress to limit the action of the President of the United States indicates that the denial of funds by the Congress is its only certain power.

On this issue, Professor Alexander Bickel of the Yale University Law School, in his excellent testimony stated:

"I am open to questions, Mr. Chairman, concerning specific provisions in the bills the committee has under consideration. I will say in general only—on the one hand—I don't think the President can be deprived of his power to respond to an imminent threat of attack—as well as to the attack itself—on the United States or on troops of the United States lawfully stationed wherever they may be, nor I believe can he be deprived of the power to continue to see to the safety of our troops once they are engaged, even if a statutory 30-day period has expired. In these respects, the Javits and Eagleton bills raise constitutional problems, if one can call them that, which are, however, soluble I believe by simple redrafting. I do think that Congress can govern absolutely, absolutely, the deployment of our forces outside our borders and that Congress should undertake to review and revise present dispositions. In this fashion, the eventuality of an attack or threat of attack against our forces can be indirectly provided for.

"On the other hand, I think that a generalized, prospective delegation by Congress to the President of the power to go to war in aid of our allies pursuant to treaty commitments gives away more of its own power than Congress may constitutionally give away by so broad a delegation—or at any rate, a delegation which it is possible to construe all too broadly. In this respect, I would favor amendment of the Javits bill."

When S. 2956 was under final consideration in the Senate Foreign Relations Committee, it was agreed that members who desired to offer amendments would do so in the Senate when the bill became the pending business. I propose three amendments which I believe would strengthen the purposes its sponsor intended.

The first amendment I suggest is that the language "by statute, or concurrent resolution of both Houses of Congress, specifically authorizing the use of the armed forces of the United States", should be incorporated in Section 3(4). This language supports the National Commitments Resolution, S. Res. 85, which was passed by the Senate on June 25, 1969, by a vote of 78–16, and the purpose of the bill.

The second amendment I propose is based upon the position that the War Powers Act should take force immediately upon enactment. I therefore suggest that Section 9 should be amended to provide only that "This Act shall take effect on the date of its enactment". If the bill states correctly the separate constitutional powers of the Executive and the Congress, it should apply to the hostilities in which the United States is now engaged in Southeast Asia.

The third amendment would propose a procedure by which the Congress would be called into session to consider the use of the armed forces of the United States in hostilities. This procedure would require that the Congress meet promptly to consider situations which involve the use of United States forces in hostilities, or could involve the use of United States forces in hostilities. I have stated above that there is a constitutional question as to whether the Congress can limit action by the Executive to 30 days, or any period of time, except by the denial of funds, but the requirement by law for a prompt meeting and consideration by the Congress of any involvement in hostilities is the power and the duty of the Congress. (A proposed procedure for calling Congress into session in the form of a joint resolution will be found at the conclusion of my individual views.)

Although I question the constitutionality of Sections 5 and 6, S. 2956 would express by legislative enactment the position of the Congress that action beyond 30 days should not be undertaken without resort to the Congress for further authority. It would have the value of inhibiting military action which did not clearly represent the exercise of the constitutional authority of the President.

There is another issue to which I would like to direct attention. Section 3 of the bill states that the bill applies to all treaties "in force at the time of the enactment of this Act". This is of great importance because it is in the provisions of these treaties that the United States is most likely to become involved militarily, not only for the defense and for the security of the United States but for the defense of other countries.

I support this provision, but I consider it important that the words "constitutional processes" used in existing and in any future bilateral or multilateral defense treaties to which the United States may become a party, be interpreted in S. 2956 to affirmatively require that the engagement of United States in hostilities beyond the emergency authority of the Executive shall not be undertaken without the approval of the Congress. This is the purpose of the first amendment which I have discussed above in this statement.

Existing post-World War II defense treaties are under attack today, and I think it proper to recall the background and events under which they were entered into following World War II, and to state that at the time they had practically unanimous support of the Congress, the news media, and the people.

The collapse of the Nazi Germany brought the Soviet armies into Eastern Europe at the close of World War II. The Communist coup in Czechoslovakia in 1948, the fall of Nationalist China, the attack upon South Korea and the possibility of a thrust from Communist China toward Southeast Asia, caused great concern in the United States, Europe and Southeast Asian countries as to their security and led to the negotiation of the treaties. There were 8 of these treaties and they included 43 nations. Among them are NATO, SEATO, ANZUS, Inter-American, and bilateral treaties with Japan, Korea, the Philippines and Nationalist China.

While these treaties differ in certain respects—particularly NATO, which recites that an attack upon a vast area defined by the treaty shall be considered an attack upon all the parties—they are similar in substance. Typical is the language of the SEATO Treaty, which provides in Article I, Section 1, that:

"Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties * * * would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional process."

The term "constitutional processes" is not defined in the treaties. And the reports of the committees and the debates in the Congress on its meaning show disagreement, without definition. It was not settled whether the requirement of "constitutional processes" meant that the President, acting as Commander-in-Chief, could commit the forces of the United States to the military assistance of another treaty party, or meant that the President should consult with the Congress to determine jointly whether the commitment of military forces was essential to the security of the United States as well as that of other parties to the treaty and that the Executive would not commit our forces until the Congress had given its approval, either by a declaration of war or by a joint resolution.

During the Senate's consideration of the Korean Defense treaty in 1954, several Senators, including myself, but particularly Senator John Stennis and former Senator Watkins of Utah, insisted that the proper interpretation of the term "constitutional processes" as used in that treaty required the authorization of the Congress. There was no authoritative answer. I support such an interpretation.

The record of the hearing before the Senate Foreign Relations Committee and the debates in the Senate disclose that all of these treaties were approved by the Senate Foreign Relations Committee and the Senate with little opposition and without precisely determining the interpretation of "constitutional processes" and the commitment of the United States. Resolutions approved by Congress—some implementing certain of these treaties—uniformly provided to the Executive broad powers to involve the armed forces of the United States in hostilities, whether in the administrations of Presidents Truman, Eisenhower, Kennedy or Johnson. President Eisenhower was particularly insistent upon Congressional approval for military movements that might have involved the United States in a war. He was supported by Secretary of State John Foster Dulles who stated, in response to Committee inquiries, that the Executive would seek approval by the Congress for any such involvement. No involvement in war occurred during the Administration of President Eisenhower.

In fact, reservations offered in Committee and on the Senate floor during the consideration of several of these treaties, and amendments offered to Executive resolutions—Formosa, Middle East, Berlin, Cuba and Tonkin Gulf—to prohibit the use of the armed forces of the United States without Congressional approval were consistently opposed and rejected in the Foreign Relations Committee and in the Senate.

I present these facts because I do not concur in one underlying theme of the Committee's report—which was never discussed in Committee and never voted on—that the Executive has taken from the Congress its powers. The record, if studied, discloses that the Congress, particularly since World War II, has not only acceded to but has supported Executive resolutions requesting Congressional authority to use the armed forces of the United States, if necessary, in hostilities.

These are settled facts of history. We can change our course but we cannot revise and rewrite history.

Now the wheel has turned and, for several years, the Senate Foreign Relations Committee, the Senate, and many in the House of Representatives have been seeking to define the Constitutional basis for the appropriate powers of the Executive and the Congress. In this respect, tragic as it has been, the war in Vietnam has had a profound influence.

The "War Powers Act" of Senator Javits and his colleagues is landmark legislation. It will do much to define the situations that could result in the engagement of United States forces in hostilities, and to limit involvement. No one can foresee all the ways in which this country might become involved in war. But this bill is a significant advance, and it serves to emphasize once again that one of the purposes that the framers of the Consttiution had in mind when they constructed the system of checks and balances for the Legislative and Executive branches was to make it difficult for the United States to enter into war. With the advent of the use of nuclear weapons, hostilities could quickly lead to a nuclear exchange—a consequence that can bring an end to civilization as we know it. The War Powers Act, for these reasons, is all the more important as it addresses the necessity to implement the provisions of the Constitution which were written to forestall entry of the United States into war except after full and considered judgment by the Executive and the Congress

and only when vital United States interests are at stake.

JOHN SHERMAN COOPER.

JOINT RESOLUTION

(Regarding the use of the Armed Forces of the United States in hostilities in the absence of a declaration of war by the Congress)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, in the absence of a declaration of war by the Congress, the President uses the Armed Forces of the United States in armed hostilities in any foreign country or whenever he believes that circumstances exist that make the use of such Armed Forces in a foreign country imminent, he shall immediately notify the Congress, if the Congress is in session, or small immediately notify the President pro tempore and the majority and minority leaders of the Senate and the Speaker and the majority and minority leaders of the House of Representatives, if the Congress is not in session, of the use or imminent use of such Armed Forces, as the case may be.

SEC. 2. Whenever the Congress has been notified by the President, or whenever the Congress has been convened under section 3 of this joint resolution after notification to those officers of the Congress referred to in the first section of this joint resolution, both Houses of the Congress shall proceed immediately to the consideration of the question of whether the Congress shall authorize the use of the Armed Forces of the United States and the expenditure of funds for purposes relating to those hostilities or imminent hostilities regarding which the Congress (or its officers) has been notified.

SEC. 3. Whenever the President pro tempore of the Senate and the Speaker of the House of Representatives receive notification from the President under the first section of this joint resolution and the Congress is not in session at the time of such notification, they shall (1) have authority to reconvene the Senate and the House of Representatives, respectively, for consideration of the question referred to in section 2 of this joint resolution, and (2) reconvene such Houses, after notice to all Members of Congress, not later than twenty-four hours after the President has notified the President pro tempore and the Speaker of the House of Representatives under the first section of this joint resolution.

SEC. 4. Sections 2 and 3 of this joint resolution are enacted by Congress—

(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (sofar as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

Mr. JAVITS. Mr. President, I wish to thank my colleague from Kentucky very much. I know of no man whose approval I would more diligently seek than the Senator from Kentucky.

The Senator from Wyoming is not quite ready. In the meantime, if the Senator from Alabama had some questions to put, he might wish to use this time momentarily.

Mr. ALLEN. Mr. President, I have a series of questions I would like to propound, but the Senator from Wyoming is just outside.

Mr. JAVITS. If the Senator wanted to start asking those questions, we could break off when the Senator from Wyoming entered the Chamber.

Mr. ALLEN. I would rather not.

WAIVING RULE OF GERMANENESS FOR REMAINDER OF DAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Pastore rule concerning germaneness be waived for the remainder of the day.

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

ORDER FOR ADJOURNMENT UNTIL 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning.

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

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Geisler, one of his secretaries.

REORGANIZATION OF THE EXECUTIVE BRANCH OF THE FEDERAL GOVERNMENT—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. BUCKLEY) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Government Operations:

To the Congress of the United States:

The sand is running in the glass, and the hour is growing late, for enactment of a critically needed reform, one that merits the very best support which you as legislators for 208 million Americans, and I as their Chief Executive, are able to give it

That reform is reorganization of the executive branch of the Federal Government—the most comprehensive and carefully planned such reorganization since the executive was first constituted in George Washington's administration 183 years ago. Its purpose is to make American government a more effective servant to, and a more responsive instrument of, the American people. Its method is to organize departments around the ends which public policy seeks, rather than (as too often in the past) around the means employed in seeking them.

The broad outlines of the reorganization proposals which I presented to the Congress just over a year ago are now well known. The seven domestic departments which sprang into being under pressure of necessity one at a time since 1849 would be viewed as a single system for the first time, and their functions regrouped accordingly. *The product would be four entirely new, goal-oriented departments concerned with our communities, our earth, our economy, and our potential as individuals—plus a revitalized fifth department concerned with keeping America in food and fiber.*

A Department of Community Development, a Department of Natural Resources, a Department of Economic Affairs, and a Department of Human Resources would be created to replace the present Department of Interior, Commerce, Labor, Health, Education, and Welfare and Housing and Urban Development, and Transportation. And the Department of Agriculture—under our plans as I ordered them revised last fall—would be streamlined to increase its ability to serve the farmer and so to serve us all. Several independent Federal agencies would be drawn into the consolidation process as appropriate. Further management reforms would be instituted *within* the new departments, to provide authority commensurate with responsibility at every level and to make form follow function intelligently.

ELECTING BETTER GOVERNMENT MACHINERY

I do not speak lightly or loosely in characterizing this measure as *critically needed.* To say that we must prepare government to perform satisfactorily in the years ahead is only another way of saying that we must provide for its very survival. *This Republic, soon to begin its third century, will surely grow old unless we take wise and decisive action to keep it young.* "Adapt or die"—the Darwinian choice is ours to make.

Hard evidence of this danger abounds—dismal statistics about the low effectiveness of Federal spending, case upon case of national problems stubbornly resisting national programs. "Most Americans today," as I put it in announcing these executive reorganization proposals in my 1971 State of the Union Message, and again in transmitting the detailed legislation for them, "are simply fed up with government at all levels."

For us here and now to make a strong beginning at making government work better for the ordinary citizen would hearten the Nation immensely; and it would do so honestly, by getting at the real roots of the fed-up feeling. Yet some may question whether this political year is a time when public men can afford to meet public frustrations head on. "Mollifying gestures, yes," they may say in effect, "but fundamental reform, no—at least not in 1972." Our reply should be that this is a most appropriate year to move ahead with reorganization.

For what is it, after all, that the people want and deserve from the public processes of any year, an election year especially? More effective government. One way they seek to get it is by calling the officials who run the government to account at the polls, as is being done in 1972. Another way is by regulating the Federal purse strings through their elected representatives in the Congress, as is also being done in 1972. Yet this necessary periodic scrutiny of men and money alone will not reach the heart of the problem. For it is axiomatic among those who know Washington best that, as I pointed out in my earlier message on this subject, "the major cause of the ineffectiveness of government is not a matter of men or of money (but) prin-

cipally a matter of machinery." We cannot, therefore, in good conscience hold out to the people the hope that this will be a year of change for the better, if we fail to come to grips with reform of government's jerry-built mechanisms.

Institutional structure here in Washington tends to coast along all too comfortably under the protection of an inertia which does not shield elected officials and public expenditures. These last come up for renewal every one, two, four, or six years; not so the structure, which endures with little or no burden of proof for its own worthiness to continue. Now, though, the structure has been weighed in the balances and found wanting.

In less sweeping reorganizations than the one I am urging, of course, a President can institute changes through plans submitted under the Reorganization Act, whereby the burden of proof rests with defenders of the status quo. However such authority no longer extends to the creation, consolidation, or abolition of executive departments. In any event we would have felt it wise to submit so massive a reform as this one for regular statutory enactment, so as to permit consideration of amendments and to provide time for full hearings and review. *My hope now is that the Congress will honor the best spirit of democratic change by electing now, in this election year, to modernize the executive structure and redeem the flagging public faith in our ability to order our national affairs effectively.*

AN OPPORTUNITY WE MUST NOT LOSE

Considerations of practicality, equally with those of principle, make the present time the best time to move ahead on this reform. The efforts of the past several years have amassed significant momentum toward overcoming the inertia which protects obsolete institutions. My proposals of last March 25 have behind them the weight of two years' exhaustive study and analysis by my Advisory Council on Executive Organization, and behind that the substantially similar recommendations of President Johnson's Task Forces of 1964 and 1967 on Government Organization. Since I laid those proposals before the Congress, the Administration and the Government Operations Committees in both Houses have made further headway on perfecting the reform legislation. A spirit of cooperation has been established; good faith and constructive attitudes have been demonstrated on all sides. We must not let these gains go to waste.

The pace of progress so far has not been disappointing, for no measure this broad and this complex can or should be pushed through the Congress overnight. *What would be deeply disappointing, though—to me, and far more importantly to millions of Americans who deserve better than their government is now organized to give them—is to lose, in this rapidly passing Second Session of the 92nd Congress, our opportunity to record some solid achievement by creating at the very least one, and hopefully two or more, of the four proposed new departments.*

The men and women who begin a new Presidential term and a new Congress next January should not have to start over again on reorganization. They will not have to, if we push ahead now with the realism to see what is wrong with the old structures, the vision to see what benefits new forms can bring, and the courage to take the long step from old to new.

OBSOLETE STRUCTURE: HOW IT HURTS

What is wrong, and what reorganization could do to set it right, is best illustrated with two actual examples. We cannot remind ourselves often enough that this matter of government organization is no mere shuffling of abstract blocks and lines on a wall chart—that it has to do with helping real people, building real communities, husbanding real resources.

The plethora of diverse and fragmented Federal activities aimed at assisting our communities is a glaring case in point. If there is any one social concept which has clearly come of age in recent years, that concept would certainly be the idea of balanced, comprehensively planned community development. Yet where do we find this reflected in government organization? We grope toward it, as with the well-intentioned and (at the time) fairly progressive formation of a Department of Housing and Urban Development; but even that step was premised on an unrealistic, artificial, and harmful distinction between urban and rural communities. In altogether too many instances the dollars and efforts earmarked for communities end up producing more derangement than development.

This is hardly surprising when we consider that:

—A city or town may now seek Federal grants or loans for sewer or sewage treatment facilities from three departments and one independent agency, each with different criteria, different procedures, and a separate bureaucracy.

—Responsibilities for housing assistance are also entrusted to different offices in some of the same departments, and to several other entities as well.

—Highway and mass transit programs have been isolated in a separate department with only partial consideration for what such programs do to our communities, large and small, forcing us to learn the hard way that highways and mass transit must be developed integrally with land use decisions, housing plans, and provisions for other essential community facilities.

Efforts have been made to clarify agency roles on the basis of urban/rural, type of facility, type of applicant, et cetera—but the real need is for unified authority, not artificial jurisdictional clarifications. *In sum, it has become painfully clear that effective integration of all Federal activities relating to community development can be achieved only under a vigorous new Department of Community Development created expressly for that purpose.*

The conservation and development of our rivers offers another pointed example. This important trust, where stakes are high and mistakes irretrievable, has at present so many guardians in Washington that in the crunch it sometimes seems to have none at all. The Department of the Interior, the Department of Agriculture, and the U.S. Army Corps of Engineers, together with several independent agencies, are all empowered to plan river basin development, to build dams and impound water, and to control water use. Elaborate interagency coordination efforts and all good intentions have not prevented waste and error from thriving under this crippling fragmentation of responsibility. Such costly fiascos as the reservoir built by the Bureau of Reclamation for drinking water supply but severely polluted and depleted by conflicting Soil Conservation Service projects upstream have been repeated too frequently. *The answer? A unified Department of Natural Resources, where comprehensive authority to develop and manage water resources would be concentrated under a single departmental secretary.*

Additional examples of dispersed responsibility could be cited in such areas as consumer protection, manpower and job training programs, and economic development activities. In each case, obsolete departmental structures have made it difficult to move forward effectively.

Even the newest of our domestic departments, like Housing and Urban Development and Transportation, now see the challenges of the seventies and beyond outrunning their own relatively narrow mandates. Departmental missions long circumscribed by law or historical development are suddenly outgrown; departmental preoccupations with limited constituencies no longer serve the public interest as reliably as before. Too often the ability of one department to achieve an important goal proves dependent upon the authority and resources of other departments, departments which inevitably attach only secondary importance to that goal. The new Federal commitments undertaken year by year are increasingly difficult to locate in any one department—usually several can claim partial jurisdiction, but none can show full ability to follow through and get the job done.

DECENTRALIZATION AND ACCOUNTABILITY

The solution to this rapidly worsening snarl of problems is regrouping of related programs by major purpose in a smaller number of executive departments. Besides opening the way for sharp improvements in government performance, such a consolidation would make the executive branch more sensitive to national needs and more responsive to the will of the people, in two ways.

First, it would decentralize decisionmaking. Far too many matters must now be handled above the department level by the Executive Office of the President or within the White House itself—not because of the inherent importance of those matters, but because no single department or agency head has broad enough authority to make and enforce decisions on them. But the four new Secretaries created by my reorganization proposal would have such breadth of

authority. Their resultant ability to conduct domestic policy on the President's behalf should speed, streamline, and strengthen the whole process significantly.

Comparable decentralization could also be achieved within each department. At present, too many questions can be decided only in Washington, because of the multiplicity of field organizations and the limited authority of their regional directors. By enlarging the scope of responsibility of the departmental Secretaries and by giving them the tools they need, we could facilitate broad delegation of authority to appropriate field officials. And this in turn means that citizens across the country would receive faster and better service from their Federal Government.

Secondly, the new alignment of domestic departments would enhance the accountability of Federal officials to the people. It is easy to see how the new Secretaries, each with his or her own broad area of responsibility to discharge, would be useful to the President and the Congress in monitoring compliance with direction and accomplishment of objectives. Once scattered responsibility was concentrated, today's frequently used and often quite accurate excuse, "It was the other fellow's fault," would no longer apply.

More importantly, though, whatever slack and tangle can be taken out of the lines of control *within* the Federal establishment will then result in a tightening of those same lines *between* elected Federal officials and a democratic electorate. Notwithstanding the famous sign on President Truman's desk—"The buck stops here"—there will be no stopping of the buck, no ultimate clarification of blame and credit, and no assurance that voters will get what they contracted for in electing Presidents, Senators, and Congressmen, until the present convoluted and compartmentalized Washington bureaucracy can be found anew and harnessed more directly to the people's purposes.

COOPERATING FOR REFORM

Where, then, does the reform effort stand today? I am pleased to note that the Congress, acting through its Committees on Government Operations, has held extensive hearings on my proposals; that testimony, most of it favorable, has been taken from a broad, bipartisan array of expert witnesses; and that committee work on the House side is nearly complete on the bill to establish a Department of Community Development.

For our part, we in the Administration have continued working to perfect the legislation and the management concepts set forth in my message of March 25, 1971. The Office of Management and Budget has taken the lead in working with Members of the Congress, adopting a flexible and forthcoming approach which has led to refinements in our legislation: one to clarify responsibility for highway safety, another to remove doubts concerning the reform's impact on the Appalachian Regional Commission and the Title V regional planning and development commissions, another to guarantee Community Development participation in airport access and siting decisions, and several more. They have also clarified that the reorganization need not entail any shift in congressional committee jurisdiction.

I am confident that this refinement and clarification process has improved our bills. *I pledge the fullest continuing cooperation of my Administration in seeing that the Congress has what it needs to move forward.*

COMMUNITY DEVELOPMENT AND NATURAL RESOURCES: ACHIEVABLE GOALS FOR 1972

There is still much work to do. For all the excellent hearings conducted to date, action has yet to be completed on any of the departmental bills which were sent to the Congress 370 days ago. Yet their passage by this Congress is still possible—especially for the Departments of Community Development and Natural Resources.

I would call special attention to H.R. 6962, the legislation for a Department of Community Development, which has now undergone 15 days of hearings in the House Government Operations Committee. Prompt, favorable action on this bill would represent a much-needed victory for common sense and the public good. Its defeat or emasculation would serve no interest except entrenched privilege and private advantage, and would cruelly disserve the interest of literally thousands of urban and rural communities with millions of people who are tired of waiting for Washington to get itself together and help them.

I urge all those concerned with the cause of executive reorganization to redouble their efforts to bring H.R. 6962 to my desk for signature during 1972—and, further, to press ahead on enactment of H.R. 6959, the Department of Natural Resources bill, and of legislation for the other two new departments which we need to govern effectively in the seventies.

ORGANIZING TO MEET THE CHALLENGES OF PEACE

Twenty-five years ago, when the United States was realizing that World War II had marked not the end, but only the beginning, of its leadership responsibilities in the world, a reorganization of the executive machinery in the defense area was undertaken. That reform, which created the Department of Defense, marks the only major streamlining of the Cabinet and the only departmental consolidation in our history. The new structure thus established has served America and the free world well in the challenging period since.

Now the time has come to take a similar bold and visionary step on the domestic side of national affairs. The 1960s, troubled, eventful, and full of progress as they were, were only the prelude to a period of still faster change in American life. The peace which we find increasing reason to hope will prevail during the coming generation is already permitting us to turn somewhat from the formerly absorbing necessity to "provide for the common defence," the necessity which motivated the last major executive branch reorganization.

Other great purposes now move to the foreground: "to form a more perfect Union, establish Justice, insure domestic Tranquility. . . . promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." To serve these purposes, let us act decisively once again, and forge new institutions to serve a new America.

RICHARD NIXON.

THE WHITE HOUSE, *March 29, 1972.*

WAR POWERS ACT

The Senate continued with the consideration of the bill (S. 2956) to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.

Mr. McGEE. Mr. President, I rise at this point on this opening day of the dialogue on the war powers bill to express some misgivings. They are basically misgivings and uncertainties, that in my judgment should give us pause about the speed with which we proceed into some ultimate decision or action in this question. But I could not proceed without saying personally to the Senator from New York and to the Senator from Virginia and other Senators who have joined in the sponsorship of this measure that the Javits bill is clearly on the highest level of any of the proposals we have been kicking around for some time, and that the tone of the conversation on it is at the level that the seriousness of the problem requires. I would simply reserve the right for ultimate judgment, because of my misgivings, and I want to explain those misgivings.

The matter we are concerned with, it seems to me, has a great deal to do with the Founding Fathers and the Constitution, but I think if we stop with the Founding Fathers and the Constitution, we then neglect a stringent measure of what the times now require.

Mr. President, I do not wish that to be misinterpreted as meaning that I am suggesting, therefore, that in the sense of urgency, we suddenly become unconstitutional. What I am saying is that I believe the proper procedure on this matter ought to be to ask ourselves, in 1972 or 1976, What ought a great power like the United States have in its structure, in its mechanism of responsibility in Government, to cope with the responsibilities of a great power in the real world?

I think that ought to be our starting point and we should, for the sake of meaningful dialogue, exclude for the moment what the times so demand and what the procedures of time itself in a nuclear age would permit us in a limited way. Having made those determinations, then we should turn to the processes of the precedents, of the Constitution itself: In what ways, if necessary, do we have to change and restructure that, and so on?

So, what I am saying, in effect, Mr. President, is that we may be holding ourselves unintentionally by starting in 1787 and proceeding down the pathways of history. I made no apology for those pathways—it is a way of life for many of us—but, rather, to ask, given the pace of events and the pressures and the timing of decisionmaking in this world, that many of us still cannot behold with total understanding, whether we are really

addressing ourselves to the right question in time.

I repeat, the war powers bill of the Senator from New York, reflecting the deliberations and thoughtfulness of the Senator from Virginia, comes the closest to anything we have had so far come to grips with, but I think it may still fall short.

The bind in which we find ourselves is because of the Constitution. Because that Constitution was written not quite 200 years ago now, by a group of men who would have been the very last ones to assert that they knew for all time to come what the requirements of the future would bring. In fact, one of the early leaders of our Republic, Thomas Jefferson, even argued, in those days, that probably we ought to scrap the Constitution every 20 years and rewrite it in order to keep up with changing events in order to update it with the changing times.

Fortunately, because of the great wisdom of the Fathers, it was possible, through interpretation, court decisions, and limited amendments, to perpetuate a living Constitution instead of a static document of principles. But, having said all that, I think we are up against the real world and its realities that are imposed upon the President, upon a Senator, and upon the articles of the Constitution that prescribe the warmaking powers. We are in this particular difficulty, because the war powers under the Constitution started with the only experience and the only insight that the men of that day could command, and that was in the old-fashioned terms of what war was all about. That was in a time when you dared argue that war was an instrument of national policy; and when you decided on a war, you declared it. And so, for declaring a war, the process in a representative democracy concept, was carefully spelled out.

I would submit that what has wrought the most havoc with our feelings, with our precedents, and with our experience and history, is the emergence of quite another set of circumstances with which we are faced, whether we like it or not—and that is with the advent of nuclear capabilities around the world, we live in a time when man probably never again dare declare war, even though he may be forced, in the real world, to wage one sort of conflict or another.

This is where the Constitution has left us wanting. This is where the lines that had been carefully drawn in advance suddenly disappeared on the horizons of changing times, and where no one can be sure of the intent of the Fathers. And, moreover, it is less important what the Fathers intended at that point, and more important what the times require—now, not yesterday.

So I suggest to the Senator from New York, the Senator from Virginia, and all of those who have given a great deal of thought to this matter, that we might do well to move more slowly than we have been on this question, and dare to examine it carefully, in an imposed vacuum, for the moment, that would divorce our judgment in theory from the past, from the precedent of great court cases, from evolution of the past into the present, for the sake of testing need and for the sake of freeing us from our biases, our prejudices, our habits, and our reflexes, in order to try to make a harsh theoretical decision about what really is required in this latter third of the 20th century; and then, once having reached a delineation of those requirements, that we proceed to examine what is called for in structuring a responsible mechanism and a division of authority to cope with the threats of this day and age.

That is all my plea really is, Mr. President, and it is couched in those terms. The Founding Fathers knew nothing, but declared wars in the strife of Europe. They knew nothing about nuclear capabilities and the wiping out of the time factor in decisionmaking as a consequence; and they knew precious little, I submit further, about the responsibilities of world leadership. They were the architects of a tender new government that turned out to be one of the great experiments in the political science of man. But they could not project that into the realistic world of giants, into a world of 135 sovereign nation states, which, by their own lives and with their own capabilities, were the masters of their own policies and their own decisions, or the lack of such decisions. They could not have envisaged the operations of this simple mechanism in a world that finds most of the nations, with which we must cope in terms of tension and crisis, monolithic powers with an infinite advantage in the decisionmaking process, in some respects, that does not have to meet the conventional tests, at all times, of public opinion, committee sessions, or the extended deliberations of legislative bodies, or of the searching of public souls on a TV screen every night in the living room. These are elements that are with us which complicate the task that rests on the shoulders of every Member of this body now, as we consider how we should proceed from here.

Yesterday I placed in the RECORD a superb think-piece written by Prof. Eugene Rostow of Yale. Professor Rostow and Professor Bickel are great colleagues at that institution. They have some differences over this question, and their differences are on a very high level, and reflect the honest differences of men who have probed the depths of this difficult question. That in itself ought to give us pause about the speed at which we proceed in our quest for solutions on this matter.

Gene Rostow capsulized his thoughts on that particular segment that I included in yesterday's RECORD with the simple phrase that "great court cases do not necessarily make good law." He was trying to suggest that we ought to free ourselves from our inclinations to resort to the guideposts or the measuring sticks of the past in an attempt to arrive at a judgment that is required to be made in the present, but very much for the future.

I would urge that we not dismiss that word of caution too quickly, that we not take it too lightly. As I see the factors which have come to a head at a single moment, that tend to move us in this body to take some kind of action, and we hope wise action, they are several. One of them is the historic and traditional rivalry or jealousy, or whatever you want to call it, between the legislative branch and the executive branch of the Government. This is not new. Congress did not invent it. This generation did not invent it. It is as old as the very first President, the Father of Our Country, and yet it remains as new as today, in the contest currently going on between the Senate of the United States and the executive branch of the Government.

Nor is that partisan, as the contesting over the past decade should well illustrate. But to keep our sense of perspective about the dimensions of the question, it is important that we remind each other that the roots go back to the very founding of the Republic and, in fact, are reflected in some of the limitations written into the document we call the Constitution.

But so has this come to a head because of the events that have flowed very rapidly in the wake of World War II, because it was that war which put us, for the first time in our history, strangely, on the front line of the world in a new role—a role we had accepted as belonging to the British for long periods of recent history, or the French, or the Germans—or the Dutch or the Spanish or the Portuguese before them.

Beginning in 1945, there we were on the front line. No longer did we enjoy the luxury we had enjoyed throughout our history of the shield of the British fleet separating us from the strife of the wars of Europe. No longer did we enjoy the luxury of looking at the strife of Europe and determining which of the two sides, that generally emerged there, we might join, or which side seemed to contain the most of our national self-interest, if any. Once again, at the end of World War II, we emerged as one of two sides, whether we liked it or not.

It is this pressure, the pressure of constant crisis, as one of the giants in the world, as we have emerged in this post-war era, that occasionally panics some in our midst and worries most of us in the current day about how we most wisely must respond, how we dare assume the burdens of our time, how we arraign those along the horizon of priorities in the world around us.

So this, too, is a circumstance that brings it to a head.

Finally, that which I alluded to a moment ago, nuclear power and nuclear capabilities, has torn the calendar to shreds and has nearly invalidated the 24-hour clock. The whole world has been shrunken to the size of an orange, almost literally, because of the impact of man's technological genius or madness, however one wishes to construe it.

These are real-considerations that have brought into focus the attention of this body on this question at this time. But none of those factors has aggravated or compounded it or emotionalized it more than the experiences of the last 6 or 8 years in Southeast Asia. Let us face it: On our committee, in which ultimately has surfaced this very thoughtful piece of legislation, and in this body, in which there has been a great deal of rhetoric about Vietnam, we have climbed

through the fog of bitterness and disagreement and antipersonalities and all the other human passions that have surfaced amid the frustrations of Southeast Asia to demand that we do something.

Frankly, much of what we are suggesting that we do seems still to have a tinge of trying to prevent Vietnam. For the moment, I care not about the case for or against or about Vietnam; but I am concerned with motivations. I suppose that most of us would wish there never had been one; that somehow it would go away; that perhaps it was a bad dream. But it is there, and it is real. Insofar as some of the motivations that have pressed us toward this as a possible solution have been aimed at preventing Vietnam, I think our own history again would give us cause to reexamine carefully.

We have an understandable penchant, one might say, to spend a great deal of time and energy preventing the latest war. We spend much more time trying to prevent the last war than we spend trying to avoid the next one, and the tragedy of that kind of effort has caught us up more than once.

In my own days on the campuses in the 1930's, how well I recall our great crusading efforts to bring peace to mankind! The idealists were at work. We applauded our Congressmen who were passing the neutrality laws because that meant no war. We applauded legislation in this body in the 1930's that finally pinned the rap of World War I on the bad guys—the international bankers, the munitions makers. We finally found the scapegoat, the enemy, and we passed laws in the 1930's to make sure that we would never go to war again—against Kaiser Wilhelm, in Germany, that is. Every one of these laws was tailored to prevent World War I.

Our efforts to prevent World War I in the neutrality legislation of the 1930's cost us dearly. It meant that we were looking backward, preventing something that could not be redone anyway, while the real forces of war were coming up from the opposite direction, and no one seemed to care—at the very moment in 1939 when a very distinguished member of the committee on which we all serve, the Committee on Foreign Relations, William E. Borah, of Idaho, rose in this Chamber, in the summer of that fateful year, to say:

> I don't trust the administration downtown. Their sources of intelligence are undependable. The administration tells us Europe is going to war, but I have better sources of information. My intelligence assures me there will be no war in Europe. Gentlemen, it is hot here, in Washington. Let us adjourn and go home.

The Senate went home, at the behest of William E. Borah, and Europe went to war. It went to war because, in part the United States had spent a great deal of its energy, of whatever enervation it could manufacture, to prevent a war that had been waged 25 years earlier, and seemed to care next to nothing about the war that at that very moment was already upon mankind, even though some Senators and most people had no inkling of its coming.

A great deal of our effort in the early 1940's and the early 1950's sought to correct some of the mistakes of the past. We tried to rise as a Nation to this frightening new responsibility as the leader of the world. There was great collaboration between the executive and the legislative branches. I think it fair to say that the collaborating process, with constant consultations in most instances, went right down to the troublesome events of probably the summer of 1964 and including the summer of 1964; namely, Tonkin Gulf. But because the events in that part of the world did not go as it appeared they should, the consequences of the decisions made were far less productive, the tragedies were greater, and the bloodshed ran far more deeply than anyone anticipated. An increasing number of Members of this body, for one reason or another, became embittered about the process. It was peculiarly at that moment, if I may say so, Mr. President, that we suddenly discovered the President of the United States had stolen all authority, that the Senate had been robbed of its role.

I would say, in all fairness, as a Member of this body and as a member of the Committee on Foreign Relations, that to the extent the Executive usurped a great deal of the power the bulk of it was usurped only as the Senate went along in consultations or agreed in principle, and that it is only in the hindsight of bitterness that we begin to restructure all of this as a contest for power.

I would hope, for the sake of history, that we in the Senate would be a bit more charitable toward the events of our time in attributing motivation and even in explaining the quest for power.

What this says to me, Mr. President, is that I see in a lot of the motivation—not in this bill as a bill—a culmination of the highest legislative effort to emerge so far from what started at a much lower level in a much more bitter way, to try to come to grips with this problem, and that now there is a disposition to make sure we have no more Vietnams. There is a grim determination to prevent any more Vietnams.

Mr. President, we do the country a disservice and we do ourselves a disservice in those instances where that may remain the motivation because, indeed, there will be no more Vietnams. The next crisis will be different. It will be something else, just as one of the errors made in Southeast Asia was in not putting into practice the mistakes made in Korea which became irrelevant, so efforts to address our legislative endeavors to making impossible another Vietnam not only will miss the point but we may end up missing the impact of the next crisis because we were looking at the wrong place in the wrong way and will emerge unprepared to command a decision, a position on policy, for the new crisis whenever it may come.

I do not pretend to be a prophet. None of us here would be under any illusions about his prophesying capabilities. But I would feel safe in predicting that whatever else, there are going to be more crises of frightening dimensions that will require the test of resolute decisionmaking. Therefore we should be very careful in what we put together to meet that crisis, and that we do it with all of the insight we can command.

My only reservation on the war powers bill of the Senator from New York (Mr. JAVITS) is that we still may not have come far enough with it, that we may not have captured the totality of the real crisis we will have to face in what I have several times referred to as the real world.

We have got to begin, unencumbered, in a theoretical sense, by the dialog of the Founding Fathers, unencumbered by court cases for the moment—I do not throw them out, I merely set them to the side for just a moment—unencumbered by the deep feeling of Vietnam, and unencumbered by the impassioned pressures to do something.

I think it is desperately important that we make haste slowly on this matter, and we take this first step that the Senator from New York has held before us today, and for the next several days, to continue to close in on the requisites of the world around us with the kind of procedures as close as we can to maintain our representative Republic, our representative democracy, for coping with the problems of the world, in a world of monolithic governments for the most part.

It is not only not an easy task, but it has caused men who also have worked deeply on this question and who have reflected for most of a lifetime on it, who have pursued all of the alternatives that have been surfaced in public ways, to start to entertain a genuine doubt as to whether we really have moved far enough in coming to grips with it.

My challenge would be that we dare to start with the assumption that there was no Constitutional Convention of 1787 at the moment; that we are now being called upon to convene one right now, and we will be required to come up with the best that we can in order to provide a mechanism for making policy in the foreign policy area, in a world that is very harsh in the toll it takes of our ideals, of the people that seek a genuinely better world and a more peaceful society.

So, with that, Mr. President, I will conclude these remarks today. I will have more to say at another time on this matter, as we develop the opportunity for a dialog a little further along which, I assume, would come more appropriately next week, after the Easter recess.

It is ironic that this moment we observe every year, in honor of the resurrection of the Prince of Peace, we are trying to come to grips with the realities of war, and with the fear of another war, in the hope that if we are forthright we may be able to forestall it, or ultimately to eliminate it as an instrument of policy.

The distinguished Senator from Kentucky (Mr. COOPER) a moment ago alluded to one of his misgivings, which I also hold serious misgivings, and about which there is a clear difference of interpretation, and that is the consequences of the war powers bill on our commitments—the NATO pact in particular; because I do not suppose any single agreement we have made as a world power is fraught with such implications and holds

so many hopes and yet poses such serious problems in regard to intent as does NATO and the NATO doctrine.

In the course of the hearings before the committee, we spent a great deal of time trying to worry out each of the facets of the NATO Pact, trying to square it as best we could with the language of the pending legislation. One thing we could not write, and one thing very difficult to say in unvarnished rhetoric has to do with intent. So that whenever government understands and believes—and the importance is "believes"—whatever the rhetoric says, there are those who have genuine fears that the mere exercise of going through the present War Powers bill casts a shadow of doubt over the integrity of the commitments of the NATO Pact. Rather than burden myself with the details of NATO, about which I want to talk at another time, I will make it part of my remarks at this time without interruption of a more formal explanation of those matters.

This legislation is potentially devastating for the NATO Alliance because of the many questions it raises and the many questions it fails to answer adequately.

In the first place, there is the situation that could arise if the Soviet Union reimposed a blockade on Berlin and S. 2956 were the law of the land. The augmentation of U.S. forces, such as has taken place during various Berlin crises in the past, would no longer be possible. In addition, the proposed legislation would limit the President's ability to deploy U.S. forces as a show of force or a deterrent action in the event of a threat or use of force by the Warsaw Pact. Thus, for example, during a Soviet buildup declared not to be directed against the United States or U.S. forces if we did not interfere, it would not be possible to augment U.S. forces in Europe under S. 2956 because that could involve an imminent threat of being involved in hostilities. The entire Reforger concept, based on redeployment in time of crises, would become illegal. The Allied Command Europe Mobile Force and the Standing Force Atlantic—both designed to provide for a multinational NATO show of force, if one member of the alliance were threatened—could not count on U.S. participation.

Second, section 3(4) of S. 2956 would prohibit U.S. personnel in the NATO integrated commands from exercising their functions once there was an imminent threat of hostilities or actual hostilities. That section provides that—

> Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

What that means, in practical terms, is that SACEUR and SACLANT could not assume command of NATO forces in time of crisis or attack before congressional action. Thus the integrated structure of the various NATO headquarters would become inoperative since they are heavily dependent on American participation at all levels. Imagine that in the midst of a buildup against the NATO countries. General Goodpaster were compelled to announce that he and his American officers were unable to carry out their responsibilities to assume a posture of readiness because the Congress had not yet acted.

Moreover, it would seem that if S. 2956 were enacted, the United States could not deploy its forces to assume a posture of readiness against the threat of armed attack upon NATO allies on whose territories U.S. forces are not deployed if the deployment could find our forces imminently involved in hostilities. This would preclude such deployments to Norway, Denmark, France, and most of Turkey and Greece.

It is not difficult to think of other shattering effects this bill would have on the NATO alliance. For example, in the event of an all-out attack by the Soviet Union against NATO, even if our own forces were directly attacked, the bill would not permit the President to take retaliatory action against the Soviet Union. This is so because under subsection (2) of section 3 of the bill, which covers attacks against U.S. Armed Forces, no retaliatory action by the President is permitted. His action would be limited to merely defending against the attack.

These kinds of limitations on the ability of the United States to participate fully and effectively in the NATO Alliance are bound to raise grave questions in the minds of our NATO allies about the steadfastness of the United States as a partner in the Atlantic Alliance. At the same time, and by the same token, there is bound to be raised in the minds of potential enemies doubts as to the ability of the United States to react swiftly in an emergency situation. Either or both of these reactions on the part of friends and enemies is likely to weaken rather than strengthen the fabric of peace in Europe.

In the eastern Mediterranean, the 6th Fleet has from time to time been deployed as a sign of U.S. interest in stabilizing a situation so that a threat of force by other powers not be allowed to decide international disputes.

This ability to use a show of force to keep the peace has been a part of our tradition since the earliest days of the Nation.

But, with Soviet bombers in Egypt and with Soviet combatant ships in the eastern Mediterranean, it takes little imagination to envisage a situation creating an imminent danger of our forces being involved in hostilities if deployed to stabilize the situation in time of crisis. This law would prohibit such a deployment without congressional approval—a requirement involving at least some delay and grave risk of increased rigidity of position on both sides.

Mr. ALLEN. Mr. President, I had hoped to be able to engage in a short colloquy with the distinguished Senator from New York at the conclusion of his remarks. If the Senator from New York would be kind enough to indulge me at this time, I would like to ask him some questions with regard to the bill.

I am sure that all Americans would like to see our country extricated from the war in Southeast Asia. I am sure that all Americans hope that there will not be a repetition of that war anywhere else on the globe.

I commend the distinguished Senator from New York (Mr. JAVITS), the distinguished Senator from Virginia (Mr. SPONG), the distinguished Senator from Wyoming (Mr. MCGEE), and the distinguished Senator from Kentucky (Mr. COOPER) who have already spoken with regard to the pending bill and have made their contributions to this discussion.

I feel sure that all of us, if we felt that the pending bill would accomplish what it is intended to accomplish, would be for the bill.

The questions I will ask are general in nature. I do not have the privilege of serving on the Foreign Relations Committee. I would like to elicit some information with regard to some of the provisions of the bill. It would seem that section 3 contains the main thrust of the bill, and it would seem to me that the provisions of section 3 are based on the assumption that the President has unlimited powers under the Constitution to use and to deploy the Armed Forces of the United States. It would seem that section 3 does not confer power on the Chief Executive to act in the three areas set out in the bill. But, on the contrary, it merely allows the basic and fundamental power of the Chief Executive to continue to operate in those three fields. And the limitations provided by the bill and by this section come not from the provisions of the first three paragraphs in section 3, but from what the section does not cover. Is that the understanding of the distinguished Senator from New York?

Mr. JAVITS. Mr. President, it is always dangerous to say a blanket "Yes." However, let me say "Yes" at the end of the statement rather than at the beginning, because when one adopts another Senator's views, especially in a matter of this delicacy, it can get distorted.

Mr. President, let me point out first that in the preamble contained on page 7, lines 10 through 19, we acknowledge the power as commander in chief of the Chief Executive to conduct hostilities authorized by the Congress, to respond to attacks or the imminent threat of attacks upon the United States, including its territories and possessions.

Therefore, the answer is that in subsections 1 to 3 inclusive we are confirming the implied power which it has come to be recognized that the President has, we believe—and we so state—under the Constitution.

So, four things are established by what I say. First, the power of the President to deploy troops, in the absence of their introduction, in hostilities or in situations where the imminent involvement in hostilities is clearly indicated by the circumstances.

Remember, I said before, and I say again, that is his judgment that we are going on. Even where there are hostilities or situations where he himself judges that hostilities are imminent, he still has the authority to repel armed attacks

on the United States, take retaliatory action to repel attacks against the Armed Forces, and protect the lives of citizens of the United States wherever they may be.

The change which we make in what is the current claim of the President's powers is to say that we name a time and then say that the continuance of the use of our forces for those purposes ceases to be an action fully within his own exclusive constitutional power and becomes one which is maturing and of a more definitive character.

That is where we have to come in and say it is okay, because we have very important war powers under the constitution, also.

On the first of those four cases I have mentioned, there is no question in this bill about the deployment of troops in the absence of hostilities or the imminent danger of hostilities. Then there are the three cases where we ourselves confirm the implied constitutional power of the Commander in Chief. Then, of course, we interpose ourselves as a Congress and say that when in our judgment a period of time has elapsed that is so long that it has ceased to be an emergency act which we have confirmed and then we hold that it becomes a war question which brings into play our own constitutional war powers. Those powers are not "implied" powers, as the Commander in Chief's powers are. They are specifically enumerated powers listed in article I, section 8.

Mr. ALLEN. Mr. President, is it the understanding of the distinguished Senator from New York that the Congress would have the power, by confirming the President's constitutional authority, to add or detract from those powers?

Mr. JAVITS. In no way, but to delineate, yes.

Mr. ALLEN. Well, what useful purpose does it serve?

Mr. JAVITS. Under the necessary and proper clause we define the length of time which we say is a reasonable time to consider his action an emergency action, which we agree he is empowered to take under the Constitution.

At the end of that time, we say it ceases to be within his constitutional power alone. We make that definition based upon a time span, we make it based on our authority under the "necessary and proper" clause, and in the exercise of our own war powers which I called attention to at the outset of my prepared remarks.

Mr. ALLEN. Mr. President, in other words, it is the theory of the bill, according to the distinguished Senator from New York, that the President under the Constitution has only the powers enumerated in the first three subsections of section 3, that many and no more.

Mr. JAVITS. He has that many in our judgment and no more when he is exercising the implied emergency powers of the Commander in Chief. But if he has more, we do not take them away. One of them that he has—which I myself confirmed, and which is not mentioned here because it need not be because no effort is made to interfere with it—is the deployment of United States forces within the United States and around the world in peace situations.

He has that authority and exercises it, and we do not challenge it. Introducing the troops into war gets into another area where Congress has its own powers, which are certainly equal in a constitutional sense.

Mr. ALLEN. Confirmation of that power is not contained in the bill.

Mr. JAVITS. It does not have to be. That is why I was able to answer the question by saying we do not attempt to confirm him in every power he has under the Constitution, only in the ones which this bill deals with.

Mr. ALLEN. In other words, the President has the powers, according to the Senator from New York, enumerated and reserved to him in the first three subsections of section 3, and he may have others.

Mr. JAVITS. That is correct.

Mr. ALLEN. But the bill does not state what he has.

Mr. JAVITS. That is correct. I will give the reason. What we are seeking to meet in this bill is imminent hostilities. We are seeking to deal only with war-making power and nothing else.

Mr. ALLEN. I would like to inquire if it is not dangerous, in the judgment of the distinguished Senator from New York, to seek to enumerate certain powers that the legislation would concede to the President, and withdraw from him or withhold from him other powers where it is difficult to anticipate every situation that might arise in the future.

Mr. JAVITS. We do not precisely for the reason that we only particularize where we feel we have a right to join and where under existing practices there is no regularization as to when and whether we do join. We find it necessary to define certain powers. As we have no need to confirm everything, we have this cover to limit other powers. We do not deal with them all. We make that clear when you combine the preamble with section 3—that is, the preamble in section 2.

Mr. ALLEN. I would like to pose a hypothetical case or two and see how the measure would apply under these powers that are confirmed in the President and the powers that by silence as to them are denied to the President.

I would like to inquire as to a hypothetical case of whether the President would be able to act in the case of the capture of a private American owned oceanliner with 2,000 American civilians as passengers, such vessel being captured by a ship or ships of the Russian fleet. Would the President have the authority to act in such cases and, if so, under what subsection?

Mr. JAVITS. The President would have the right to construe his power to act under paragraph 1 of section 3 "to repel an armed attack upon the United States, its territories and possessions," to include an attack on a U.S. ship the ground that the attack of the ship is an attack on U.S. soil, although it may be on the high seas.

Mr. ALLEN. What about a ship of a foreign registry?

Mr. JAVITS. If it were a ship of a foreign registry, then the President could act under paragraph 3 "to protect while evacuating citizens and nationals of the United States," and so on on the ground that whatever country the ship is registered in was also its soil, and that this paragraph applies because "such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control."

That language is on page 8 of the bill.

Mr. ALLEN. I see that. Would the Senator feel an American citizen on a French liner, to use the language cited, would be evacuated as rapidly as possible from any country?

Mr. JAVITS. I think that if the American citizen were in imminent danger of his life, the concept of getting him out of that danger would constitute a situation, no matter whether he was on land or on a foreign ship at sea. The meaning of the phrase is not the citizen is in a position where he should be and can be evacuated, including from a foreign country, and including a ship of that country which is, for all practical purposes, the soil of that country.

Mr. ALLEN. In other words, a passenger on a French liner would be in the process of being evacuated "as rapidly as possible" from that country?

Mr. JAVITS. My concept is when the U.S. President steps in to protect that citizen, at that point the citizen would be in the process of being evacuated.

Mr. ALLEN. What right does the United States have to step in under the Senator's legislation?

Mr. JAVITS. There are many steps a President could take, especially diplomatic. If the citizen is in danger for his life, the troops might be used under the terms of subsection (3). We stated "to protect while evacuating." In other words, if the citizen is in imminent, mortal danger, what do we do? We try to get him off the ship or in a secure position so that he may come off ultimately, secure in body, and so on. Generally, of course, this would be done by diplomatic means, not by sending in the Marines.

In my judgment that is fully covered here, if drastic, last resort action has to be taken involving use of our Armed Forces. But this is really a rather far-out hypothetical case. There are international conventions about piracies and hijacking at sea, and in the air.

Mr. ALLEN. What about use of the phrase "while evacuating citizens and nationals of the United States, as rapidly as possible"? How would that come in to play? How would that operate?

Mr. JAVITS. I think the concept there is to use the minimum amount of force required for the purpose of evacuation or "rescue". For example, let us say a U.S. crewman is on a foreign ship and there is imminent danger of his being killed, and he was sought to be evacu-

ated. The idea is, first, to give the mandate that he is to be gotten off the ship. It might be necessary to take some far more comprehensive action. But the point is the thrust of the section would be where a citizen of the United States gets in trouble, the first preference would be to evacuate him, whether it is on a ship or in a country, rather than to go in and subjugate that country, using the excuse that the citizen is in danger. The President is certainly not obliged, under subsection (3), to send in the troops. Rather he is authorized to do so in defined situations.

President Johnson sent 20,000 troops into Santo Domingo not many years ago and the cover used there was that he was protecting our nationals. Now, what we would be saying, assuming Congress agreed to this subsection, is that we approve the President going in when his judgment meets the criteria but that the thrust and organization of the enterprise should be to evacuate as rapidly as possible and not to protect them on the spot, so that for practical purposes we are taking possession of the country. We are making a decision where the best interests of the United States are served by evacuating a citizen from a country rather than staying there on the ground and using that as the reason to stay in that country. Perhaps if this had been the law the history in the Santo Domingo situation might have been different.

Maybe you could not take the action and as rapidly as possible. It would include the fact that 20,000 troops would have to stay there because conditions did not permit us to take the action. That is not ruled out by this definition, but the definition puts an obligation on the President that the purpose of his expedition, the one-line directive he gives, is to evacuate U.S. nationals as rapidly as possible, but circumstances may prevent that from being "immediately" and that does not prevent our troops from going there and staying there if there is no other way, but it is not to confirm their presence in that country indefinitely.

Mr. ALLEN. Does not the section, on the contrary, indicate that they have to be in the process of being evacuated to come under the original protection?

Mr. JAVITS. That process can take time, and "as rapidly as possible" could be a relatively long time. What I was pointing out was that we are declaring a policy in respect to rescuing nationals. We cannot deal with the nuts and bolts and tactics of implementation. That is up to the President.

Mr. ALLEN. The Cooper-Church amendments which have been debated here many times in the Senate, were predicated, I believe, on the admitted power of the Congress over the purse. In other words, if the money for maintaining a force on foreign soil were withdrawn from the President, of necessity he would have to withdraw the troops. That is correct, is it not?

Mr. JAVITS. That is correct.

Mr. ALLEN. This legislation would approach the problem from a different angle and would seek to confirm in the President certain enumerated powers and deprive him of certain other powers that he is now exercising, or contending that he can exercise. By "he" of course, I do not mean the present incumbent in the office, but the office of the President. That is correct, is it not?

Mr. JAVITS. That is correct.

Mr. ALLEN. Was not that approach considered and abandoned at the time an effort was made—a successful effort—to adopt the Cooper-Church amendment?

Mr. JAVITS. No. The constitutional theory of all the amendments which have been offered with respect to the Vietnam war that I am aware of was, encompassed in the McGovern-Hatfield and Cooper-Church type, they have related to the appropriations process.

We have found a serious imperfection in that process, and that imperfection is the natural reluctance of the Congress—in which I have joined—to cut all supplies of materials, transportation, and so forth, to troops in the field. In addition, rarely would there be the approach of a vehicle which could be so expertly designed for only that unique purpose. For example, we have over-all appropriations for all troop activities of the United States, and it is extremely difficult to relate what pertains to Vietnam and what does not. So those of us who have asserted this side of the issue have found that it is a blunderbuss approach by Congress, and Congress is reluctant to do so.

Our contention is that it is not necessary to have such a blunderbuss type of approach; that we can design a special means, a special methodology, for the Congress to use in accordance with its constitutional war powers. As a matter of fact, the Senator used very good words in his question when he said it is a power which the President claims to have—he may not have—and that is to stay in Vietnam, or that he does not even need the Gulf of Tonkin Resolution for what this administration has done, and even more strongly for what the Johnson administration did.

If the Senator will indulge me, since I think it is important that an elucidation be given, I should like to read President Lyndon Johnson's words on this very subject——

Mr. ALLEN. Yes.

Mr. JAVITS. Which I think deserve repetition. I say that not invidiously, for I have respect and regard for the President. He held this view as sincerely as I hold mine, but President Johnson said in his news conference of August 18, 1967:

> We stated then, and we repeat now, we did not think the resolution was necessary to do what we did and what we're doing. But we thought it was desirable and we thought if we were going to ask them (Congress) to stay the whole route and if we expected them to be there on the landing we ought to ask them to be there on the takeoff.

This is a very clear statement of Presidential position.

The President claims these powers. We say it is time, therefore, for us to say what we claim, and we do think that does make a very basic legal difference, for this reason, if the Senator from Alabama will indulge me: It is Hornbook law that an unasserted power leaves open to another authority to utilize that power, whereas an asserted power closes that door.

The historic importance of this legislation is that it represents the first time that the Congress will have asserted that power under the Constitution, and not under its right to appropriate or not appropriate and conditions of appropriations.

So I say to the Senator this is a direct exercise of authority by the Congress under its constitutional authority. It is not in any way tied to the appropriation process.

Mr. ALLEN. Speaking of asserting authority, what about the President's assertion and maintenance of his authority to act under his asserted war powers? Would that add any efficacy to his assertion of power?

Mr. JAVITS. Well, it only adds the efficacy that he has more likelihood of asserting it successfully if we have not acted in the field. When we have acted in the field, I do not think the President will make that assertion. I believe the President, like the Congress, will carry out this legislation.

The Senator understands that he can completely frustrate and contravene this legislation if he does not act as we always envisage a president as acting. He could find everything to be a direct and imminent threat to the United States. He could make any kind of finding. To deny that is to have us go on a treadmill. I do not believe any President of the United States would do it. I believe this legislation is entertained seriously in the Congress because we all accept that. We all believe that if we codify the law, as we plan here, and if this becomes the law, the President will obey it. At least, he will make every good faith effort to obey it.

Mr. ALLEN. Even if the President asserted the power to act in the field the Senator would concede to him, that power would last for only 30 days in the absence of a declaration of war. Is that correct?

Mr. JAVITS. In the absence of a congressional resolution, or, of course a declaration of war. In other words, Congress could, by resolution, give him whatever authority Congress wished to give him to carry on. That is expressly provided for in subsection (4) of this document, at page 8, line 24, of the bill:

> Pursuant to specific statutory auhorization . . .

Then we go on to make the various exceptions.

So we accept the fact—and I think the Senator from Wyoming (Mr. McGEE) said that very well—that it is highly unlikely in this modern day that we are going to have a declaration of war. Indeed, it is not just recent. We have had very few declarations of war in our national history.

So we envisage a legislative approach which is not a declaration of war but which will vest power in the President, because we contend in this bill that we

share that power, once the President is free to take emergency action; but at a given point, emergency action changes into a state of war, and at that point we assert our authority.

Mr. ALLEN. Section 3, the first line there, makes reference to the President having this authority in the absence of a declaration of war. That would be his initial action following the 30-day period, is that correct?

Mr. JAVITS. Yes; but of course if there is a declaration of war, then you have a totally different situation. The President then is the man who conducts the war, and he has the full authority of a commander in chief in a declared war. This measure is not intended in any way to abort the consequences of a declaration of war. That is why its starts with that exception.

Mr. ALLEN. Does the Senator feel that this legislation would deprive our country of flexibility in time of danger and in time of the necessity to act to protect the national security?

Mr. JAVITS. I do not. I feel, on the contrary—and this perhaps goes somewhat to the argument of the Senator from Wyoming—that we will be on a firmer basis than ever, because one of the things that troubled many in the administration, and has troubled many other Senators, many other legislators, and millions of Americans, was the fact that the divisiveness in our country over the Vietnam war became so evident as to trouble those with whom we were allied. It was that which created the uncertainty in the minds and hearts of many people with whom we were closely allied. And that divisiveness derived from the fact that Vietnam is a Presidential war, not a war of national commitment.

I am making, and those who are joining with me are making, an effort to give a sense of reassurance that, having now codified the alinement of relationships between Congress and the Chief Executive, when the U.S. commits itself it will stand as a unit, and not be subjected to the doubts and challenges to authority which characterize Vietnam.

I would like to point out to the Senator the importance of our continuing the three area resolutions, that is, the Formosa resolution, the Middle East resolution, and the Cuban resolution. The reason that we continued them, notwithstanding the statement of the administration that they do not need them, is, we said, "Sure, you do not need them, perhaps, in your construction of the powers that you think you have, but you certainly do need them if we pass this bill, and we at least want to give you the option of continuing them or telling us that you do not want them for policy reasons."

The minute we say that, we also include the likelihood of additional resolutions.

For example, the administration may decide that it wants to do something in the way of advance authority about the Arab-Israeli impasse, and the merits.

I beg Senators who were here, for example, at the time of the Gulf of Tonkin Resolution—I was, and I participated in it and take full responsibility—to think of the difference in our own thinking, in our own conscience and responsibility, between the President coming in here and saying, "I have acted, and I just want you to back me up," and in two days the thing would whip through here—and the fact that I would know for all practical purposes that I am voting for what is tantamount to a declaration of war, because I would know that it is not just a matter of backing the President when he has already done it, but that I can stop him by refraining from action. It would have taken a lot more soul searching than many of us took at that particular time, and though it is not an excuse, we should have undertaken more soul searching in respect to the Gulf of Tonkin Resolution, though we did not, because that was not the frame of reference in which we were acting.

I submit to the Senator from Alabama that we will have the weight on our shoulders, just as the President has it on his shoulders, and in response to those who say, "Maybe you will not act as quickly, as wisely, or as well," I can only say that in the bloody history of mankind, a lot less of it has been shed when the responsibility is shared than when one man has the complete authority in his own hands.

Mr. ALLEN. The Senator said, in his judgment, in effect, that he felt the President would accept the spirit of the legislation, and would comply with it.

Mr. JAVITS. I do.

Mr. ALLEN. Does the Senator feel, then, that the President would accept the Senate's and the entire Congress interpretation of his powers under the Constitution, if he were advised that the Senate was in error in that construction?

Mr. JAVITS. This is a law, after all. It would have to be passed as a law. It would have to be passed by both Houses and signed by the President. His veto could be overridden. He would have an absolute right to veto. The overriding would take huge majorities in both Chambers.

I believe the process which we have initiated is consistent with a deliberative judgment by all concerned that the time has come to define our respective powers.

As I do not know the final outcome of this bill, nor does the President, that is about the best I can say in answer to that question.

Mr. ALLEN. If the President is going to follow the legislation in letter and in spirit, is there not danger that our potential enemies around the world would make a careful study of the legislation, and they would say, "The President can act in this area, he can act in this area, and he can act in this area, but he cannot act in these other areas as to which the bill is silent?"

We know the propensities of some of our potential enemies to push us just as far as they possibly can, just as far as they feel that they can get by with it. Is there not a danger that this legislation would enable our potential enemies to be able to know just how far they could push us without expecting retaliatory action on the part of the President?

Mr. JAVITS. I do not think so, any more than our potential enemies could anticipate the will and resolution of the American people, which they always have to decide.

After all, suppose our potential enemies decided that because we had the power to cut off money, we suddenly would not appropriate money for a given thing, and they pressed us on that ground. Suppose they thought we were not going to put up any further money for troops in Europe; why should they engage in mutual balanced force reduction? Suppose they did not think we were going to put up any further money for an ABM, why should they worry about whether we have an ABM or not?

The only thing this law does, in my judgment, I do not see that it gives us any disadvantage with them, but I think it gives us a vast advantage with our friends, and that our friends would know absolutely and confidently what they could count on as far as we are concerned.

Second, I think it gives us a big advantage with our own people, and that our own people would feel that our judgment as to war and peace is more likely to be more provident, under this kind of methodology, than, based on the Vietnam experience, it is likely to be without the methodology.

Those are the real issues, and I cannot tell the Senator that some fool in some chancellery will not draw a deduction from this which he should not draw. Neither can I tell the Senator that if we cut $5 billion off the defense appropriation—indeed, the Armed Services Committee itself did that; it made a material cut—some fool in some chancellery will not come to a similar conclusion. I just do not know. It makes him no less a fool if he does.

Another thing I would like to point out to the Senator is that our bill accommodates any resolution that the President would wish to bring us. For example, if the President feels there is any doubt about any particular activity he wishes to engage in of a generic kind, there is no reason why we cannot give him that authority in advance. That is one of the things that is good about this bill, and it does not wait until there is a crisis to act.

That is the significance of the fact that we ourselves have escalated in importance the three area resolutions. The President says he does not need them. We say, "You may need them, and we are giving you a chance to treat them as law," and we give ourselves the same opportunity, because in that area, at least, these are resolutions which we have already undertaken, and which are binding on us with respect to this legislation.

Similarly with respect to some other area resolution of some other type of resolution which the President might wish to have in order to give himself the necessary freedom to act. But the difference between that type of situation and the present situation is that he would know he has to get it from us. So we

would join in the decision, and it simply would not be unilateral on his part.

Mr. ALLEN. Since the legislation is predicated, I assume, on the assumption that the President's power as Commander in Chief of the Armed Forces under the Constitution is a limited power and since the legislation confirms certain power in the President under the first three subsections of section 3, would the Senator be kind enough to enumerate some of the powers that are denied to the President under the proposed legislation by its silence?

Mr. JAVITS. The alleged powers which it denies to the President under the proposed legislation is to utilize his power under the Constitution, for example, to repel an attack upon the United States, to extend to the point where he is engaged in a condition of war—to wit, beyond 30 days—and I gave the classic example of Santo Domingo; or to limit his power to rescue nationals of the United States who are endangered in some foreign country, beyond the point where it is a rescue of nationals in order to get them out but becomes an occupation of that country.

We have utilized the 30-day timespan as the best measure of judgment we can make upon those very difficult issues. We thought that quantitative standard was likely to be more effective and wiser than a qualitative standard. So we chose the quantitative—to wit, the 30-day standard—rather than some qualitative definition.

Mr. ALLEN. Actually, then, it is a time limitation of 30 days plus a limitation on the extent of the action that could be taken under the confirmed powers. Is that correct?

Mr. JAVITS. No, I will not accept the latter. It is a time limitation. We believe that the time itself is bound to limit the extent. The bill does not limit the extent.

Mr. ALLEN. Would the Senator say that all there is here, then, is a 30-day limitation?

Mr. JAVITS. Let me finish.

The time limitation we have taken is in lieu of a qualitative limitation—that is, the extent.

So we have accepted a quantitative rather than a qualitative limitation as the best and wisest limitation.

Mr. ALLEN. That just leaves, then, a 30-day limitation on his power to act, does it not?

Mr. JAVITS. It leads to a 30-day limitation on his power to act in given situations, and those given situations are hostilities, imminent danger of hostilities, where they relate to the attack on armed forces, attack on the country, or protection of our nationals.

Mr. ALLEN. I asked the Senator to enumerate powers asserted by the President that would be cut off.

Mr. JAVITS. I have enumerated them. As a matter of fact, no powers asserted by the President are cut off. The powers, I said, are quantitatively limited—if that is a cutoff, which it may very well prove to be.

But no one contends, I hope, that the President has unlimited power. The words "Commander in Chief" mean something. They do not say he is the absolute ruler and dispenser of everything for the American people—their life, their liberty, their property. That is why we have a written Constitution, because the President, as we, has only such power as the Constitution gives him.

Mr. ALLEN. I ask again: Does that not then boil the issue down to a 30-day limitation on his power to act?

Mr. JAVITS. It does not, because it is not a 30-day limitation on all powers that he has. We developed that originally. We have chosen certain areas in which we are legislating, and in those areas the limitation is, in our judgment, designed to effectuate our purpose, which is that where an act which he begins with power to take becomes an act which we believe he does not have the power to take—to wit, to get into a state of war—without our concurrence, then we call for our concurrence. That is the basic concept.

Mr. ALLEN. If the President will have the power to act in these three areas set forth in section 3, in the absence of section 3, how then would the Senate have the power to impose a 30-day limitation on the exercise of that power?

Mr. JAVITS. But he does not have the right, the power—in my judgment and in the judgment of those who are backing this bill—to continue to exercise that authority to the point where it changes into a different kind of authority. In other words, whereas he can repel an attack, he cannot carry on until he is in a state of war. We fix that at 30 days.

The Senator may differ with us, but we say that the quantitative time span of 30 days, for practical purposes, is enough to determine that question and that that is better than a qualitative standard.

Mr. ALLEN. But if his power is unlimited in that area, in the absence of the legislation, and the legislation confirms that power in him, how can it then go a step further and say, "We are confirming this power in you for exercise for a period of 30 days"?

Mr. JAVITS. He does not have an unlimited power, because that power is limited according to the Constitution, too. He is Commander in Chief. He can only repel an attack. An attack can be repelled in 5 minutes or it can be repelled in 20 years, and there have been hundred-year wars in this world.

If we adopted the Senator's theory—at least, the theory implied by this question—the President could carry on a hundred-year war, and we would not have a word to say about it. He has no such power under the Constitution. That is what we say.

So we have tried to get the best standard we could, which is the quantitative standard of a period of time.

Mr. ALLEN. But how could the Senator contend that there is any constitutional basis or reasoning for setting a 30-day period after it has already confirmed this general power in the President?

Mr. JAVITS. The constitutional basis is the power of Congress to make laws necessary and proper about everything in the Constitution, including the President's power as Commander in Chief and including our own war powers. Therefore, his power, once it changes its nature by the fact that you cease to repel an attack and you are in a state of war, is no more unlimited than ours, and we have the authority under the Constitution to define it. That is what we are doing.

In other words, the implication of the question—I do not understand why the Senator feels that should confound me—is that the minute you say he has some power, that this power is unlimited and permanent. I say he does not have any power of such a nature at all. He has the power to repel an attack. That is a limited power, and we can define its limitation to repel an attack, and we say it is 30 days. After that, he is at war, and we want to join in that decision. We say that, and we have that authority to make that finding under the "necessary and proper" clause.

Mr. ALLEN. That is the Senator's understanding and contention, I would say. Is that correct?

Mr. JAVITS. That is correct. That is my understanding and contention.

Mr. ALLEN. I thank the distinguished Senator from New York for clarifying these points for me.

Mr. JAVITS. I thank my colleague.

Mr. BENNETT. Mr. President, today the Senate begins its discussion of the war powers bill. As I understand this legislation, it is to limit the role of the Executive in foreign affairs by subjecting Executive decisions to specific congressional control.

The sponsors of this legislation base their case for a limitation of the Executive "war powers" on their definition of the original intent of the framers of the Constitution for the conduct of foreign affairs. I believe with the certainty that history will support me—that it is extremely difficult to determine just exactly what was in the minds of the framers when the Constitution was written. We know that there was ample discussion of the opposing merits of legislative versus executive control of foreign affairs. We know also that the Constitution in its final version gives both branches a role in the vital decisions of foreign affairs, and that is probably what the framers intended. However, I believe it is abundantly clear that the framers did not intend that Congress be responsible for the daily conduct of foreign affairs. This prerogative was left in the hands of the Executive. Thomas Jefferson expressed this view best. "The transaction of business with foreign nations is executive altogether."

Congress was given the power to declare war, to provide for raising and equipping the Armed Forces, and Congress was given the power of the purse. There is nothing in this delegation of power which would imply that Congress was to be the deciding force in the conduct of all matters of foreign policy.

Since the time these initial decisions were made, our world has been the development of means of warfare and techniques of foreign policy never envisioned by the framers—all dealing with the daily conduct of foreign affairs and all requiring the resources of a strong and flexible Executive. The role of Congress in the conduct of foreign affairs was designed to be minimal and the nature of

modern warfare and diplomacy has reinforced the Executive role. For Congress to attempt to limit the role of the Executive in responding to the contingencies of our modern world is dangerous and unrealistic.

The sponsors of this legislation advocate the proposition that the Executive has assumed powers and responsibilities not delegated to him by the Constitution and that he has usurped, so to speak, congressional authority, notably the authority to declare war, in the conduct of foreign policy.

Mr. President, I find it difficult to follow this assumption. The Executive has exercised powers given to him as Commander in Chief of the Armed Forces and chief diplomat under the Constitution.

He has used his offices for the conduct of foreign affairs as made necessary by existing conditions in this day and age, conditions which were not foreseen by the founders and which could not be defined by them. I remind my colleagues that no one has taken from Congress its power of the purse—to control the spending of the exective branch and thus express congressional intent. No one has usurped the congressional power to declare war if that is what must be done.

There have been innumerable references in the discussion of this bill to the war in Vietnam and to the Gulf of Tonkin Resolution and the grant of power made therein. The fact remains, however, that Congress had the option to express its dissatisfaction with the executive conduct of the Vietnam conflict at the time the resolution was passed. It chose not to. At this time when the war in Vietnam is fast becoming a thing of the past I think we should be extremely cautious not to let the events and the accusations of the past color our actions to the point where we take excessive action and create a situation which will only cause greater problems in the future. Our concern should be for the future and I do not believe this legislation is necessary and I believe its passage would be a regrettable action.

Congress had its opportunity to provide limitations of this nature when it evaluated the NATO and SEATO treaties, when it passed the Formosa and Middle East Resolutions and it wisely refrained from interfering with the executive's conduct of foreign affairs.

Mr. President, not only is this legislation unnecessary of dubious wisdom, it also could have unforeseen effects upon our international commitments.

This legislation would severely limit the ability of the United States to respond appropriately to attack or threat of attack involving our security interests.

It would set forth its obvious limitations for our potential opponents to see, and finally, it would cause a serious erosion of the credibility of the President of the United States as a leader in the free world in the eyes of our allies.

In the case of NATO the effects of this legislation would be the most critical. It would virtually tie the President's hands from an advance deployment of force or show of force in the face of a belligerent buildup or threat of use of force. Even in the event of actual attack in an area covered by the NATO treaty the President could repel the attack for only 30 days without later congressional authorization.

A particular example of the possible effects of this legislation is Berlin. Berlin has long been and will continue to be a favorite pressure point of our opponents. This legislation would prohibit a U.S. show of force or additional deployment of troops in case of closure or threatened closure of access to Berlin. It would prohibit the use of all tactics we have used in the past in this area.

This is a single example but there are many more which the provisions of this legislation simply do not take into account. The same problems would result from the deployment of naval forces to the Middle East. Our hands would be tied there as well as in Latin America.

If Congress is concerned about its relationship to the Executive in foreign affairs it need only exercise its traditional authority. Permanent legislation which would bind the Executive in his conduct of foreign policy on a day-to-day basis is unwise and unnecessary. I shall cast my vote against this bill unless it is modified by amendment to preserve for the President all flexibility of action necessary to protect the interests of our country in the face of fast-moving events.

Mr. EAGLETON. Mr. President, the most important decision we, as a Nation, can make is the decision to go to war. I ask today that this Congress reassert its constitutional mandate to make this important decision.

It has become easier in this country to go to war than to make peace. This stark reality has not come about because men have erred. It has come about because the institutions established by our Founding Fathers to cope with man's fallibility have been eroded by expediency.

Our Constitution was written by men who had experienced the tyranny of a monarch and who clearly understood the danger of placing ultimate power at the disposal of a single man. The framers sought to create a process by which important decisions would undergo the careful scrutiny of thorough deliberation and collective judgment. They fully expected that the responsibility for committing the nation to war would be shared—and that Congress, the most representative branch of Government, would authorize this important commitment.

We must begin today to restore balance between the executive and legislative branches so that decisions of such consequence as those involving war and peace do not depend upon the wisdom of one man. That is the purpose of the War Powers Act and that is the intent of the Constitution.

Congress was seen by the framers as a deliberate, diverse and accessible body—the very characteristics for which it is most frequently criticized today. These qualities were not considered liabilities, but rather assets in the decisonmaking process. Collective judgment, not efficiency, was seen as the most important ingredient in the solution of the greatest problems that faced our Nation.

It was with these qualities of Congress in mind that Alexander Hamilton, an advocate of centralization and increased Executive power in his time, conceded:

> The superior weight and influence of the legislative body in a free government.

The framers understood that the institutions they had established would be challenged by future events—as they are today. They undoubtedly had this in mind when they gave Congress the residual authority to:

> . . . make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Mr. President, the intricate balance created by our Constitution has been severely upset by the overwhelming predominance of the executive branch. Deliberation and collective judgment have been preempted in favor of efficiency. Congress not only has the authority, it has the obligation to act to protect its role in our system.

Some are concerned that this act will undermine the President in his role as Commander in Chief.

We must remember that our country is a democracy. The President cannot be more committed to a task, nor any wiser, than the people.

The late Adlai Stevenson said:

> The essence of republican government is not command. It is consent.

This act restores consent to the decision to go to war. Its effect will strengthen the President's command, not weaken it.

This bill is the result of months of hearings by the Foreign Relations Committee, extensive public debate, and the scholarly work of this Nation's best qualified constitutional lawyers. It incorporates the work of five separate resolutions, including my own, Senate Joint Resolution 59.

The sponsors of the War Powers Act are joined together in a purpose which transcends partisan and ideological lines.

We have taken great pains to protect the proper constitutional role of the Commander in Chief to defend our Nation and to conduct authorized hostilities to assure our security.

We do not cast blame in the direction of energetic and well-meaning Presidents who have perceived the monumental task before them and have taken prerogatives established by predecessors as their own. It is our purpose to assure that Congress will fulfill its constitutional obligation and regain the mandate to decide why, when, and where this Nation goes to war.

The sponsors of this act do not presume that good faith can be ordered or that correct decisions can be legislated. Our purpose is to impose clear criteria within which men of good faith can and will operate.

A multitude of scenarios have been hypothesized by opponents of this legislation in an attempt to show that it would tie a President's hands. A careful examination shows that this would not happen.

A most common scenario has a friendly nation under attack while the United

States stands idly by, helpless to come to its defense.

If no imminent threat to the United States is apparent but there is adequate consensus that we should come to the aid of our friend, Congress will act—and fast enough. If a nation can be overrun in a matter of hours, there is little the United States can do in such a tenuous situation. If, as is normally the case, a hostile action is a gradually accelerating situation, the Congress and the American people will have the time to assess the feasibility and desirability of involving American forces. More important, when the United States does act, it will be with a hand strengthened by consent and unity of purpose.

In addition, although unlikely, it is conceivable that an attack on an ally could constitute an implicit threat to the United States. If this is true, and the President can latter satisfy Congress and the country that it is true, he may commit U.S. forces under the emergency provisions of section 3.

Critics have also charged that the United States will not be able to honor its commitments if S. 2956 is enacted. They base these charges on the fact that section 3(4) specifies that authority to introduce U.S. forces in hostilities cannot be inferred from existent or future treaties.

In my statement before the Foreign Relations Committee, I pointed out that no treaty, including the NATO Treaty, was self-starting—that U.S. forces cannot be committed to hostilities on the authority of a treaty alone. The President and the Senate could never legally authorize such a self-starting mechanism because the Constitution clearly assigns the war powers to the Congress and the President, not to the Senate and the President. The House, which is not constitutionally engaged in the treaty making process, must be a part of the decision to declare war.

Article 11 of the NATO Treaty, perhaps the most tightly worded of U.S. treaty commitments, provides that decisions which would put other provisions into effect are to be made in accordance with the constitutional processes of the signing parties. This type of clause is present in all U.S. treaties. The War Powers Act, therefore, has no effect on any U.S. treaty commitment except to more adequately describe the "constitutional processes" referred to.

Criticism has also been directed at section 5, which states that authorization granted under the emergency provisions of section 3 shall not be sustained beyond 30 days without further approval by Congress. It is said that this section could interfere with the President's Commander in Chief powers if he should decide that more than 30 days are necessary to perform his defensive mission.

If the emergency situation is clearly authorized by the act—and the Constitution—the President should have no problem making his case to Congress within 30 days. Congress is not as susceptible to whim as a single man might be. It therefore would be highly unlikely, if not impossible, that Congress could turn a President down in the face of a real emergency.

If, however, the situation cannot be authorized by section 3 and it becomes obvious by the 29th day that the President has overstepped his authority, Congress could not, under this act, take away the President's right—and responsibility—to defend our forces as they withdraw. Congress would, however, insist that those forces be in the withdrawal stage.

Some of the advocates of war powers legislation have expressed concern that section 3, by allowing an introduction of forces "in situations where imminent involvement in hostilities is clearly indicated," could be construed as allowing a preemptive or first-strike nuclear attack solely on the President's judgment.

U.S. strategic doctrine depends upon second strike deterrence or retaliation in the case of nuclear attack. Even the development of an American first-strike potential is constitutionally questionable and has been considered morally reprehensive. A President could not, therefore—short of a complete breakdown of our system—launch a preemptive nuclear attack, and this bill cannot in any way be interpreted as affecting this policy.

It should also be recognized that, in the final analysis, all any legislation can expect to achieve is to hold a President legally and politically accountable for his actions. The consequences of a nuclear holocaust would make the question of political and legal responsibility moot.

Some have expressed concern with the provision in section 7 which would require that:

> Any bill or resolution authorizing a continuation of the use of U.S. forces in hostilities would, if sponsored or co-sponsored by one third of the Members of the House of Congress in which it is introduced, be considered reported to the floor no later than one day following its introduction . . .

It should be emphasized that this sentence continues with this phraseology:

> unless the Members of such House otherwise determine by yeas and nays.

If more than 1 day of deliberation is required, Congress clearly has the mechanism to provide for it.

Finally, section 9 states that the act will:

> Take effect on the date of enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date . . .

This act, therefore, excludes the hostilities in which we are currently engaged in Vietnam.

We do not attempt by this exclusion to ignore the most important issue of our time, and we cannot. This legislation would not be before this body today if Vietnam had not exposed the breakdown of the process by which we go to war.

This act cannot deny the reality of 55,000 Americans dead and billions of dollars expended in futility. The legacy of Vietnam has been anxiety, doubt, and uncertainty about ourselves and our Nation. These are the consequences of an unpopular war and they provide the backdrop for this legislation.

Our involvement in Vietnam is still the subject of heated debate in this country. It is the emotion of this debate that we wish to avoid, for we seek not personal recriminations but real institutional reform. This reform can only be achieved in an atmosphere free of partisanship and the emotions of the moment.

We look to the future—a future that will see this country enter a war only with the consent of the people.

In the words of Tolstoi:

> War . . . is such a terrible, such an atrocious thing, that no man . . . has the right to assume the responsibility of beginning it.

I urge this body today to return the power to declare war to its constitutionally ordained place within our system—the Congress of the United States.

Mr. President, joining me as one of the sponsors of the War Powers Act is the distinguished Senator from Virginia and my good friend and colleague, BILL SPONG.

A former professor of international law at William and Mary College, Senator SPONG is uniquely qualified for his important role in the war powers debate. As a member of the Foreign Relations Committee, Senator SPONG has been instrumental in bringing this important legislation to the attention of the Congress and the public.

At the outset of this important debate, I wish to commend to the attention of my colleagues an excellent and scholarly article written by Senator SPONG for the fall 1971 edition of the University of Richmond Law Review.

Mr. President, I ask unanimous consent that Senator SPONG's article entitled, "Can Balance Be Restored in the Constitutional War Powers of the President and Congress?" be printed in the RECORD.

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

[From the University of Richmond Law Review, fall 1971]

CAN BALANCE BE RESTORED IN THE CONSTITUTIONAL WAR POWERS OF THE PRESIDENT AND CONGRESS?

(By William B. Spong, Jr.*)

The Cambodian incursion of April, 1970, brought forth renewed observations from constitutional scholars, eminent and amateur, that the war-making power of Congress had been eroded and the checks and balances system for the initiation and conduct of hostilities by American troops, as contemplated by the Founding Fathers, rendered almost inoperative. Debates on the National Commitments Resolution[1] and the Cooper-Church Amendments, as well as events following adoption of these measures, appear to sustain such conclusions. How has this happened? What, if anything, can be done to restore some balance in this crucial area of public policy? Should there be an effort by Congress to re-create such balance, particularly in view of the emergency nature of nuclear and conventional conflict and the changing world in which we live?

What follows is an attempt to provide some answer to these questions. There are excellent recent articles available on the constitutional authority of Congress and the President to commit American forces to foreign combat.[2] The scholarship and objectivity in these works is more appreciated when one considers the present high level of emotion attendant to the United States' prolonged participation in the war in Indochina. The reader will not find herein an

Footnotes at end of article.

in depth treatment of the subject of congressional and presidential war powers. Rather, the purpose of this article is to provide a general background against which to weigh the merits of certain suggestions presently before Congress. Readers should be mindful, as is this writer, that the present struggle between the executive and legislative branches of our government over many facets of foreign policy—commitments, treaties, executive agreements and legislative limitations on the Executive—may not be the ideal backdrop for objectivity from one in the eye of the storm. Nevertheless, the mission here is to review and comment with a view toward determining the advisability of action or legislation in prospective rather than to evoke quarrels over past events and present policy.

I. THE CONSTITUTION AND WAR POWERS

What did the Founding Fathers intend to be the respective roles of Congress and the President in regard to war-making?

Article I, section 8 of the Constitution gives to Congress power to provide for the common defense; to declare war; to raise and support (for periods of no more than two years at a time) an Army and Navy; to make rules which will regulate and govern the military forces; to provide for calling out the militia to enforce laws, suppress insurrection, and repel invasion.

Article II, section 2 describes the President as "Commander-in-Chief of the Armed Forces as well as the State Militia, when it is called into service for use by the federal government."

As is well known, the original draft submitted to the Constitutional Convention of 1787, consistent with the Articles of Confederation, gave to Congress the power to "make war." James Madison's notes on the debate over this particular clause provide insight into the intent and near unanimity of the framers. In the course of those debates, Charles Pinckney of South Carolina expressed his belief that the Senate would be the ideal depositary of the war power inasmuch as each state had an equal interest in the security of the nation, and because the Senate was better ". . . acquainted with foreign affairs, and most capable of proper resolutions." [3]

On the other hand, Pierce Butler, also of South Carolina, believed Senate deliberations to be too slow and cumbersome. He preferred vesting the war power in the President, who "will not make war but when the Nation will support it." [4]

As to the extent of authority the President should possess, Mr. Madison and Mr. Elbridge Gerry of Massachusetts moved to insert "declare" in the place of "make" war, ". . . leaving to the Executive the power to repeal sudden attacks." [5] Although this change was objected to as providing the President with the authority to commence war, it was agreed to by a vote of eight to one.[6]

Alexander Hamilton, recognized as perhaps the leading advocate of a strong Presidency, later undertook to explain the role of the President as Commander-in-Chief in *The Federalist*, when he wrote:

"In this respect his (the President's) authority would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the Confederacy; while that of the British King extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies,—all which, by the Constitution under consideration would appertain to the legislature.[7]

Later, in 1801, while attacking Jefferson for his timidity against the Barbary pirates, Hamilton wrote:

"That instrument has only provided affirmatively, that, "The Congress shall have power to declare war"; the plain meaning of which is, that it is the peculiar and exclusive province of Congress, *when the nation is at peace*, to change that state into a state of war; whether from calculations of policy, or from provocations or injuries received; in other words, it belongs to Congress only, *to go to war*. But when a foreign nation declares or openly and avowedly makes war upon the United States, they are then by the very fact *already at war*, and any declaration on the part of Congress is nugatory; it is at least unnecessary." [8]

James Madison, regarded as the father of the Constitution and its most authoritative interpreter, wrote in 1793 of the executive power to make war:

"Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war, including the power of judging of the causes of war, is *fully* and *exclusively* vested in the legislature; that the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing congress, whenever such a question seems to call for a decision, is all the right which the constitution has deemed requisite and proper. . . ." [9]

Patrick Henry, perhaps the most eloquent of those opposing ratification of the Constitution, was a voice for many who feared assumption by the President of any part of the war-making powers. In the Virginia Convention, Henry presaged with alarm the concept of the President in the field, leading an army into battle.[10]

Thomas Jefferson, evidently assured that the war-making powers of the President had been limited, wrote to Madison in 1789: "We have already given in example one effectual check to the Dog of War by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay." [11]

A careful reading of the ratification debates and the analysis offered by *The Federalist* leads to certain conclusions. First, the framers drew a distinction between offensive and defensive hostilities. Involvement of the nation in any type of war, other than one of self-defense, was to be solely the responsibility of Congress. If the nation were suddenly attacked or invaded, the President would respond to repel the attack, but Congress would decide the nature of the action to follow—action which should come only after a collective judgment had been made by those directly elected as representatives of the people. Second, the President's only role in the war-making process was, as Commander-in-Chief, to direct operations as the executive arm of the Congress. Mindful that a great majority of the colonists had an aversion to standing armies and the power politics of Europe that had allowed sovereigns to go suddenly to war, the framers sought to distinguish between war-conducting and war-making.

Hamilton's criticism of Jefferson's policy toward the Barbary pirates, included in the former's views regarding defensive wars, has been used to justify presidential war-making in later years. But this came ten years after the constitutional debates. There is scant evidence that the Founding Fathers intended to grant any war-making power to the President other than to defend against invasion when Congress was not in session. Nevertheless, in later years the enlarged role of the President as the initiator of foreign policy, an expansion of the concept of the President's defensive powers, the creation of standing armies and a broader interpretation of the Commander-in-Chief clause of the Constitution, have resulted in an inferior role in the war-making process for Congress. This result is contrary to the concept of checks and balances through which the Founding Fathers sought to insure against the growth of disproportionate power in any one of the three branches of government. It is also contrary to public view and expectation that the Constitution assures and requires its elected representatives to have a voice in the initiation of military hostilities abroad.

II. HISTORICAL BACKGROUND OF AN UNBALANCED WAR POWER

To explore the methods by which balance in the war powers between the legislative and executive branches might be restored, one should review the historical background of how it was lost. To facilitate this review, three stages in the country's history might be identified.[12] The first stage is a period from 1776 until the end of the nineteenth century. Despite many minor involvements in which the President employed force abroad, this period should be regarded as one of collaboration between Congress and the President.

After the years during which the earliest Presidents deferred to Congress in the making of war, acceptance of an "act of war" theory, which allowed the President to deploy military forces so long as they were not used to commit "acts of war," represented a slight move toward presidential power. A review of the many occasions during the nineteenth century when Presidents used force abroad supports a general conclusion that the dividing line between legislative and executive authority was flexible enough for the President to use military force in insignificant circumstances, while preserving the role of Congress in decisions of greater gravity.[13]

The second period, which began with this century, is one during which collaboration between the President and Congress became the exception. Presidents seldom consulted Congress before using military forces abroad. On the other hand, Congress rarely gave evidence of willingness to be other than a negative force in the shaping of foreign policy. During the earliest years of this century Presidents Theodore Roosevelt, Taft, and Wilson used armed forces in many parts of Latin America. These actions were in contravention of the "act of war" theory because they were against sovereign states.

The negative influence of Congress was quite evident during the Wilson and Roosevelt Administrations in the years preceding the two World Wars. This period cannot be called one of either presidential or congressional domination. It is marked for its lack of cooperation between the legislative and executive branches.

The third period, which may or may not be drawing to a close, must be associated with the Cold War and the attendant atmosphere of constant crisis. Until recently, Congress—concerned for national security, unsure of its own role and that of the nation in an era of unsurpassed power and commitment abroad, and undoubtedly sensitive to charges of obstruction [14]—has deferred to the presidential use of military forces abroad with or without legislative authority.

The sending of armed forces to Korea in 1950 by President Truman without congressional authorization or consultation is the first instance of a President claiming an inherent power to act "in the broad interest of American foreign policy." [15] This action was not without its congressional defenders.[16]

Soon after the Korean intervention came President Truman's decision in 1951 to send four additional divisions to Europe as a potential deterrent against Russian aggression. Never had a President committed comparable

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military forces to an area not in a state of war. Despite lengthy debate in both Houses, President Truman ultimately deployed the troops as he deemed necessary.[17]

Secretary of State Dean Acheson, expressing the view of the Truman Administration, stated in response to congressional inquiry into the President's proposed deployment of troops: "We are in a position in the world today where the argument as to who has the power to do this, that, or the other thing is not exactly what is called for from America in this very critical hour." [18]

After Korea, there began a decade during which congressional resolutions involving the potential use of military forces abroad were adopted. President Eisenhower, while stating that he had certain inherent powers as Commander-in-Chief to take whatever emergency action was necessary to protect the rights and security of the United States, asked for presidential authority in 1955 to use American armed forces for the protection of Formosa and the Pescadores. The President stated that a suitable congressional resolution would clearly and publicly establish that authority.[19]

Subsequent to the adoption of the Formosa Resolution, the Middle East Resolution of 1957 was adopted during the Eisenhower Administration, the Cuba Resolution of 1962 was adopted during the Kennedy Administration, and the Gulf of Tonkin Resolution of 1964 was adopted during the Johnson Administration. Each of these resolutions, with the exception of the one concerning Cuba,[20] is subject to an interpretation that it concedes inherent war initiating powers to the President as Commander-in-Chief. All were adopted in moments of national urgency when the constitutional questions posed were apparently obscured.[21]

Not only did these resolutions, except for the Cuba Resolution, concede inherent war power to the President, but they granted in advance broad and undefined war-making powers. When President Eisenhower, a year after adoption of the Middle East Resolution, ordered 14,000 American troops to Lebanon, no reference was made to the resolution of the previous year. Similarly, in October of 1962 when the Cuban missile crisis occurred, President Kennedy did not refer to the Cuban Resolution for his authority in establishing a naval quarantine. Unlike the other resolutions, the Tonkin enactment has often been cited as authority for extensive and far-reaching military activity. It has also been represented by former Under Secretary of State Nicholas Katzenbach to be "the functional equivalent" to a declaration of war when combined with the SEATO Treaty.[22]

Both Presidents Johnson and Nixon have, however, asserted inherent powers to act in Vietnam without reliance upon the Tonkin Gulf Resolution. The Nixon Administration so advised the Senate Foreign Relations Committee by letter from the State Department.[23] In reviewing the circumstances of the adoption and language of the resolutions, one has these impressions: (1) none of the Presidents of the post World War II years believed the resolutions were essential for them to have power to commit troops abroad without the consent of Congress; (2) the crisis atmosphere that attended consideration of the resolutions probably inhibited any detailed discussion of the constitutional questions presented; and (3) the spirit of national unity in time of crisis resulted in the adoption by Congress of general words of support that also gave undefined war initiating powers to the President for unlimited periods of time.

President Johnson's view of his war-making power as a constitutional prerogative might best be demonstrated by his sending of American forces into the Dominican Republic on April 28, 1965. Although there was brief consultation with Congress, this was accomplished after the decision had been made,[24] and the troops were dispatched without referrence to any congressional act or resolution—as had been done by President Truman in Korea and by President Eisenhower in Lebanon.

Therefore, the evolution of an unbalanced war power unfolds—first, a period of collaboration between Congress and the Executive; then, a period of unilateral presidential action and congressional obstruction from the beginning of this century to World War II and the emergence of the United States as a dominant world power; and, lastly, a period of presidential dominance of the war-making power, exemplified by the "faits accomplis" of Korea, Lebanon, Cuba, Vietnam, Dominican Republic, Cambodia, and Laos.

This last period had its beginning with President Truman's unilateral deployment of troops in Korea without formal congressional consent. Although Presidents Truman, Eisenhower, Kennedy, Johnson, and Nixon have sought to give an appearance of consultation or collaboration with hurried crisis meetings and general congressional resolutions, all believed they possessed an inherent power as Commander-in-Chief to deploy armed forces abroad without congressional consent if they deemed it in the national interest. Undoubtedly, all recognized they might receive greater public support with an appearance of collaboration, but were not prepared to show the deference or risk the obstruction that hindered the Wilson and Roosevelt Administrations in the years preceding the two World Wars.

III. ANALYSIS OF PRESIDENTIAL HEGEMONY IN DECISIONS TO EMPLOY THE ARMED FORCES

A. Few formal declarations of war

At the risk of over-simplification there are several observations that might readily be made at this juncture. First, that a formal declaration of war has rarely preceded the initiation of hostilities by American forces. The United States has only declared war five times in its history.[25] So what is presently in need of definition is whether the Constitution mandates a role for Congress in the making of decisions to commit military forces without a declaration of war.

B. Failure of Congress to adapt

A second observation is that Congress has played a major role in the demise of its war powers. The Senate Committee on Foreign Relations painfully stated this:

"The committee is well aware—and has expressed its awareness several times in these pages—that one of the reasons for the flow of the war power out of the hands of Congress and into the hands of the President has been the failure of Congress to adapt its power over the armed forces to the circumstances of the nuclear age. Tacitly acknowledging a lack of confidence in its ability to make that adaptation, Congress has permitted its war power to be transferred to the hands of an executive which, though less susceptible to self-doubt than the Congress, is no less susceptible to error." [26]

In addition to the uncertainty of the nuclear age and the reaction to congressional negativism of the periods prior to the First and Second World Wars, there is legitimacy to the claim that Congress has often preferred to second guess the President. Former Undersecretary of State Nicholas Katzenbach recently referred to this as Monday morning quarterbacking.[27]

However, there have been occasions during debates on foreign policy resolutions when Senators have voiced constitutional objections to language delegating responsibility for the declaration of war to the President. A consistent prophet of what the resultant effect to the war powers might be should this ominous trend continue, was the late Senator Robert A. Taft. It is somewhat ironic that often Senator Taft was in sympathy with the Executive's policy aims, but objected to methods that ignored congressional concurrence. Senator Taft on the subject of the sending of American troops to Iceland by President Franklin Roosevelt in 1941 wrote:

Mr. President, on Monday the President of the United States notified the Senate that forces of the United States Navy had already arrived in Iceland in order to supplement, and eventually to replace, the British forces now stationed there. This action was taken in accordance with an understanding reached by the President with the Prime Minister of Iceland, frankly inspired, however, according to the Prime Minister, by the British Minister to Iceland, who explained to him that British forces in Iceland were required elsewhere, and suggested that he apply to the United States for forces. The Prime Minister stressed the fact that the United States forces must be strong enough to meet every eventuality and the President promised that the Government of the United States would immediately send troops, apparently including the United States Army as well as the Navy, to supplement, and eventually to replace, the British forces now there. Judging from the various press reports, it is likely that 80,000 American boys are in course of being sent to Iceland 2,400 miles from any American territory, and substantially a part of the continent of Europe.

In my opinion, the President has no legal or constitutional right to send American troops to Iceland. It is not an agreeable task for me to question the authority of the President to take any action which he has taken in the name of the Government of the United States but I believe it would be most unfortunate if the Senate of the United States should acquiesce without protest in acts of the President which might nullify for all time the constitutional authority distinctly reserved to Congress to declare war.

It would be a tremendous stretching of the Constitution to say that without authority from Congress the President of the United States can send hundreds of thousands of American soldiers to Europe when a war is raging over that entire Continent, and the presence of American troops would inevitably lead to war. The President cannot make aggressive war. Neither can he intervene in a war between two other nations, because such intervention, even though it does not immediately involve a physical attack on one of the combatants, is clearly the making of war.

"There has been no attack on the United States and no threat of attack. The action of the President is not only beyond the powers which the Constitution has granted to him, but it is a deliberate violation of his pledge to the American people." [28]

It was Senator Taft who questioned the intervention in Korea by President Truman. Senator Taft wrote:

"My conclusion, therefore, is that in the case of Korea, where a war was already under way, we had no right to send troops to a nation, with whom we had no treaty, to defend it against attack by another nation, no matter how unprincipled that aggression might be, unless the whole matter was submitted to Congress and a declaration of war or some other direct authority obtained." [29]

The high-water mark of congressional resistance during the years since World War II was the "Great Debate" of 1951, following an announcement by President Truman in September of 1950 that he intended to send additional ground troops to Europe as part of a NATO buildup. The debate began with a speech by Senator Taft in the Senate on January 5, 1951, and ended in April with the adoption of a resolution approving what had taken place, but calling for "future congressional approval" if more than four di-

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visions should be sent to Europe.[30] Senator Taft viewed adoption of the resolution as a victory.[31] Others saw it as a draw between the President and Congress.[32] The resolution was never tested and the "Great Debate" in retrospect seems hardly more than a pause in the sequence of events from Korea to Cambodia and Laos during which the power of the President to determine, without congressional authority, the necessity for committing military forces abroad has come to be regarded as almost absolute.

C. Limited judicial guidance

One might ask what judicial interpretations have been placed upon the war powers of Congress and the President under the Constitution. The Supreme Court has not often taken the opportunity to define or limit the war-making power. There is little disposition by the Court to consider "political questions," [33] and one may safely predict that if balance is to be re-created in the war-making process, it will be without benefit of judicial guidance.

The Supreme Court has denied certiorari in many cases, challenging the validity of the war in Vietnam.[34] It left standing a ruling by Chief Justice Burger, then Judge of the Circuit Court of Appeals for the District of Columbia, in which the Court stated:

"The fundamental division of authority and power established by the Constitution precludes judges from overseeing the conduct of foreign policy or the use and disposition of military power; these matters are plainly the exclusive province of Congress and the Executive.[35]

There are, however, decisions that should be noted—most of them in the early years of the nation. In *Penhallow v. Doane* [36] the Supreme Court suggested that the war power was not dependent upon the specific provisions in the Constitution.

In *Bas v. Tingy*,[37] the Court held that Congress could declare war as a public or perfect war or as a limited or imperfect war, a thought expounded a year later in *Talbot v. Seeman* [38] when Chief Justice John Mitchell wrote:

"The *whole powers* of war being, by the Constitution of the United States, vested in Congress, the *acts of that body alone* can be resorted to as our guides in this inquiry. It is not denied, nor in the course of the argument has it been denied, that *Congress may authorize general hostilities*, in which case the general laws of war apply to our situation; or *partial hostilities*, in which case the laws of war, so far as they actually apply to our situation, must be noticed.[39] (Emphasis added.)

In *Little v. Barreme*,[40] the Court held that President John Adams was limited as Commander-in-Chief by the restrictions enforced by Congress. The three cases mentioned above all arose as a result of the undeclared naval war with France. In these opinions, the Court observed that Congress was expected to play the predominant role in the initiation and prosecution of war. The opinions compliment views of the war-making powers as expressed by the writings of the framers of the Constitution.

The few cases concerning the war powers heard in later years have, for the most part, tended to strengthen the hand of the Executive and broaden his powers. A large number of the military actions not involving a formal declaration of war have concerned the protection of the lives and property of citizens of the United States.

In *Durand v. Hollins*,[41] the Court sustained President Pierce's order in 1854 to bombard Greytown, Nicaragua, because of the refusal of local officials to pay reparations for an attack upon the American consul.[42]

In the *Slaughter House Cases*,[43] the Court said in 1873:

"Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States." [44]

Other cases have sustained the right of the President to use the armed forces abroad for the protection of American lives and property.[45] These precedents probably aided President McKinley in his decision to send troops to China without congressional authorization in the Boxer Rebellion of 1900–1901.

It is of interest that President Eisenhower's justification for sending troops to Lebanon in 1958 was his inherent constitutional power to protect American lives and property,[46] rather than the Middle East resolution of 1957. Protection of lives and property.[47] Protection of lives and property was likewise the supposed basis for President Johnson's dispatching of Marines to the Dominican Republic in 1965.[48]

The constitutional power of the Executive to repel sudden attacks without congressional authorization has always been acknowledged. This power to wage defensive war was expanded in *Martin* v. *Mott* [49] when Justice Story said:

"The power thus confided by Congress to the President, is doubtless, of a very high and delicate nature. . . . But it is not a power which can be executed without a correspondent responsibility. It is, in its terms, a limited power, confined to cases of actual invasion, *or of imminent danger of invasion*. If it be a limited power, the question arises, by whom is the exigency to be judged of and decided? . . . We are all of opinion, that the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself, and from the manifest object contemplated by the act of Congress. The power itself is to be exercised upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union.[50] (Emphasis added.)

Earlier reference was made to Alexander Hamilton's view of presidential war powers as expressed in 1801.[51] This expanded view of defensive war was reflected in President Polk's initial instructions to General Taylor, authorizing him to attack first in defense as soon as the Mexicans crossed the Rio Grande and to enter Mexican territory in the pursuit of the invaders.

The Hamilton view that once the country is attacked, the President may take action without further authorization from Congress, received approval during the War Between the States when, in *The Prize Cases*,[52] the Supreme Court held valid President Lincoln's proclamation of a blockade of the South. Of the President's powers, the majority opinion said: "He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority." [53]

In *United States v. Sweeny* [54] the Supreme Court said that the purpose of the Commander-in-Chief clause ". . . is evidently to vest in the President the supreme command over all the military forces—such supreme and undivided command as would be necessary to the prosecution of a successful war." [55]

The case most often cited as a restriction upon the President's war powers is *Youngstown Sheet & Tube Co. v. Sawyer*.[56] Justice Jackson said that the President "has no monopoly of 'war powers,' whatever they are." [57] This decision was prompted by President Truman's seizure of the steel plants during the Korean War—an action which the Supreme Court held invalid. It should be noted, however, that this case questioned the President's power over a domestic issue—labor-management relations—rather than the conduct of hostilities or the commitment of troops.[58]

In addition to the Court decisions that recognized an expanded executive power in the protection of American lives and property, and an expanded definition of defensive war, there also emerged a theory of inherent presidential right under the Constitution to protect national interests.[59] This received judicial recognition in the case of *In re Neagle* [60] inasmuch as the Supreme Court ruled that the power of the President to enforce the laws extends to obligations growing out of America's international relations. But there have been few recent decisions on the constitutional war powers * and almost none involving a confrontation between legislation and presidential action. One concludes that what has come to be regarded as an inherent power is more the result of presidential action and congressional acquiescence than judicial blessing.

D. Nuclear age and the cold war

Unquestionably, the nuclear age and the cold war created a climate of emergency that prompted Presidents to take action without congressional concurrence where earlier Executives may have hesitated. Since the time of entry into Korea, Presidents have moved without congressional authorization, and legal precedents have been cited to support their actions.[61] Those who have evoked the Founding Fathers as the constitutional authority for congressional participation in the war-making process have often been brushed aside.[62]

What relevance has an eighteenth century document drafted in the days of sailing vessels and limited cannon range to an age of instant communication, of nuclear warheads and intercontinental missiles? This question is implicit in the minority views on the National Commitments Resolution filed by Senator Gale McGee, who wrote: "The machinery of policy decisions assembled nearly two centuries ago simply has not been able to keep pace with the changing requirements of present-day realities." [63]

Two foreign policy developments of recent years should be noted. One is the increased use of the executive agreement as a method of making foreign commitments without having a treaty ratified by the Senate. This had its genesis with President Franklin Roosevelt's transfer of fifty destroyers to the British, and began the increased use of commitment by executive agreement. Today there are almost four times as many executive agreements as treaties.[64] Another development was the extensive execution of multilateral treaties and the emergence of the thesis of collective self-defense. During the Truman and Eisenhower Administrations, the United States entered into a series of multilateral and bilateral treaties which sought to encircle and contain the Communist nations.[65] These treaties represented commitments for military assistance all over the world. Although not self-executing, they broadened our commitments to a degree that Presidents had a ready basis for military assistance and, in some instances, for the making of war.[66]

And so, in varying degrees, obsolescence of the formal declaration of war, congressional acquiescence, lack of judicial interpretation of the war powers, and the cold war have all contributed to the atmosphere of a period during which presidential hegemony over the war powers has emerged. Without arguing the merits of troop commitments made by Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon, it can be argued that the public believes there has been far greater congressional participation in the decisions that led to Korea, Lebanon, Vietnam, the Cuban blockade, the Dominican Republic, Cambodia, and Laos, than has actually oc-

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curred.[67] If the intent of the Founding Fathers is to be fulfilled and the public's expectations of what the Constitution requires are to be realized, there should be congressional participation in decisions committing the nation to hostilities other than of an emergency nature. How can this be accomplished?

IV. CORRECTIVE PROPOSALS ADVANCED BY CONGRESS

A. In general

Suggestions for re-establishment by Congress of a more influential role in the exercise of war powers may be divided into three categories: (a) that future resolutions be deliberated carefully and defined clearly as to the scope of congressional authorization, (b) that there be standard procedures enacted for reporting and consultation between the President and Congress, and (c) that by legislation the circumstances under which the President might initiate hostilities in the absence of a declaration of war be defined by rule.

The broad and undefined nature of the powers granted in past resolutions has been noted herein. Recommendations for consideration of future resolutions have been made by the Senate Committee on Foreign Relations. They are as follows:

"(1) Debate the proposed resolution at sufficient length to establish a legislative record showing the intent of Congress;

"(2) Use the words "authorize" or "empower" or such other language as will leave no doubt that Congress alone has the right to authorize the initiation of war and that, in granting the President authority to use the Armed Forces, Congress is granting him power that he would not otherwise have;

"(3) State in the resolution as explicitly as possible under the circumstances the kind of military action that is being authorized and the place and purpose of its use; and

"(4) Put a time limit on the resolution, thereby assuring Congress the opportunity to review its decision and extend or terminate the President's authority to use military force." [68]

There have been numerous proposals for establishing consultation with Congress before forces are deployed. Professor Alfred DeGrazia of New York University proposed that at each session Congress establish a force committee [69] to share with the President the responsibility of determining when armed forces will be used without a declaration of war. Professor Henry Commager recently testified on the war powers before the Senate Committee on Foreign Relations and, among other things, suggested:

". . . that the Senate meet the argument of emergency, hypothetical as it is, by creating a permanent committee, a quorum of whose members would remain permanently in Washington, with authority to require that the President consult with the Senate or the Congress before taking any action that might involve the Nation in armed conflict. Such a committee could be counted on to respond to a genuine emergency just as promptly as would the President, and counted on, too, to present the case for caution. . . .

"that the Senate create a standing committee to consult with the President on all executive agreements, and with authority to designate those of sufficient importance to require submission to the Senate as treaties." [70]

Congressman Frank Horton of New York has introduced legislation that would create a joint committee on national security. This new committee would be designated by Congress as the panel authorized to consult with the President and his national security advisors in situations where congressional powers are involved and where congressional ratification of military actions is required.[71]

Congressman Clement Zablocki of Wisconsin has introduced a resolution which would require the President upon (a) committing military forces to armed conflict, (b) committing military forces equipped for combat, or (c) substantially enlarging military forces already located abroad, to submit a written report to the Speaker of the House and the President of the Senate. The report is to set forth the circumstances necessitating the action; the constitutional, legislative and treaty provisions giving authority for the action; the reasons for not seeking specific prior congressional authorization; the estimated scope of activities and such other information as the President may deem useful to Congress in the fulfillment of its constitutional responsibility.[72]

B. Senate proposals for restoration of a balanced war power

There are three resolutions and a bill presently before the Senate designed to limit or define the President's constitutional war powers. The bill S. 731 was introduced by Senator Jacob Javits.[73] The three resolutions are S.J. Res. 18, introduced by Senator Robert Taft, Jr.; [74] S.J. Res. 59, introduced by Senator Thomas Eagleton,[75] and S.J. Res. 95, introduced by Senator John Stennis.[76]

Should a war powers measure be enacted at this session of Congress, it is likely to be a hybrid of these proposals. If it is the sense of the Senate Foreign Relations Committee that such a measure should be reported, it must be decided whether it is to be in the form of a bill or a resolution. The author is a co-sponsor of the Javits bill, but is unaware of any operative difference between a bill and a joint resolution. Nor is there any difference between their legal force and effect. Each requires the signature of the President, and both are subject to veto by the President.

Each of the four measures defines the circumstances under which the President may or may not commit the armed forces to hostilities. While legislative enactments that seek to interpret the Constitution have traditionally been in the form of a joint resolution rather than a bill, the two forms are now being used interchangeably to the extent that there has ceased to be any operative, or even theoretical, difference between them. Either type of enactment would place the President on notice of the circumstances under which he may expect to be supported by Congress if he initiates hostilities.

The legislation offered by Senators Eagleton, Javits, and Stennis have a common characteristic—a requirement that there be advance congressional authorization for the commitment of the armed forces to hostilities by the President, except in certain designated emergency situations. In any of the defined situations, the President may commit the armed forces to combat for a period not to exceed thirty days unless explicitly authorized by Congress. Senator Taft's resolution, while defining the emergency circumstances under which the President may initiate hostilities without authorization, allows the President to continue using the armed forces until or unless the authorization is terminated by Congress. All four proposals require that the President report to Congress after he has initiated hostilities. All but the Taft resolution require continuing periodic reports. The Taft resolution requires only notification to Congress within twenty-four hours after deployment or commitment to combat.

The Javits bill [77] authorizes the President, in the absence of a declaration of war, to commit the armed forces to hostilities to repel a sudden attack on the United States or its armed forces, to protect the lives and property of United States' nationals abroad, and to comply with a national commitment resulting exclusively from affirmative action taken by Congress as well as the President. Military hostilities initiated for these purposes would be reported promptly to Congress and could not be sustained beyond thirty days unless authorized by Congress. Congress by joint resolution could terminate hostilities in less than thirty days. The bill also contains provisions for the expedition of committee and floor action on any authorization for the continuation or determination of military hostilities. Finally, the Javits bill would exclude from its operation any hostilities already undertaken prior to enactment.

The Eagleton resolution [78] states that the President may commit the armed forces to hostilities to the extent authorized by Congress through a declaration of war, statute, or joint resolution, but states that authorization may not be inferred from legislative enactments, including appropriations bills, which do not specifically include such authorization. It is also specified that no treaty may be construed as authorizing armed action without future congressional authorization. The resolution further authorizes the President, during any authorized hostilities, to enter, invade or intrude upon neutral countries when in hot pursuit of an enemy or when a clear and present danger exists of an imminent attack on United States armed forces by enemy troops located in the neutral country.

Similar to the Javits bill, the Eagleton resolution authorizes the President, in the absence of advance congressional authorization, to commit the armed forces to hostilities in order to repel an attack on the United States or its armed forces. Also, the President is authorized to remove American citizens from any country in which such citizens are being subjected to an imminent threat to their lives. There is no provision in the Eagleton resolution for the protection of the property of American nationals nor is there authorization for military action to comply with a national commitment.

As in the Javits bill, the Eagleton resolution requires that any hostilities undertaken by the President be promptly reported to Congress and that the question of terminating or continuing the hostilities be decided by Congress within thirty days.

Analogously to the Javits bill, the Eagleton resolution excludes from its authority hostilities commenced prior to its enactment and, also, contains provisions for the expedition of legislative action in committee and on the floor. The Eagleton resolution also requires the President to report periodically to Congress on the status of any authorized hostilities as well as the extended scope and length of such hostilities. The Eagleton resolution offers a definition of the term "hostilities."

The Stennis resolution [79] is similar to the Eagleton resolution in many respects. For instance, it also states that authorization may not be inferred from any provision of law, including appropriations bills, but must be specified. As in the Javits and Eagleton proposals, the Stennis resolution would authorize the President to use the armed forces to repel an attack on the United States or its armed forces. The Stennis resolution would also authorize action to protect the United States or its armed forces against the danger of future attacks, and to prevent or defend the United States against an imminent nuclear attack. As found in the Eagleton resolution, there is also a provision to allow the President to take action to evacuate United States citizens from any country in which their lives were in danger.

The Stennis resolution also requires prompt notification to Congress of any military action undertaken and requires further, with provisions for the expedition of committee and floor action, a decision within thirty days by Congress whether the authorization to use the armed forces would be extended or terminated. During hostilities, the President would be expected to report to Congress at least every six months.

While the Javits and Eagleton proposals

Footnotes at end of article.

simply exclude any hostilities begun prior to enactment, the Stennis resolution specifically excludes the armed conflict in the Republic of South Vietnam and all military activities carried out against North Vietnam or its allies in North Vietnam, Laos, Cambodia or the waters surrounding the Indochina Peninsula. Finally, the Stennis resolution contains a definition of "armed conflict" closely resembling the Eagleton definition of "hostilities."

The Taft resolution [80] states that armed forces will be committed to combat abroad only with the prior authorization of Congress except in the following circumstances: (1) when the President finds that the territory or armed forces of the United States are under attack or under imminent threat of attack; (2) when he finds that deployment of the armed forces is necessary to fulfill a treaty obligation; or (3) when he finds that deployment is necessary to exercise the inherent right of self defense. In any of the foregoing circumstances, the Taft resolution authorizes the President to commit the armed forces to combat at his sole discretion, but he must notify Congress within twenty-four hours of any military action.

Congress may terminate the authorization to use the armed forces by concurrent resolution. The Taft resolution contains no provision compelling termination of military action after thirty days unless Congress authorizes its continuation.

Unlike the other proposals which exclude the current war in Indochina, the Taft resolution specifically authorizes the continued deployment of armed forces of the United States for such time, and in such a manner, as the President, as Commander-in-Chief, shall deem necessary and appropriate to accomplish a withdrawal of such armed forces and the assumption by the South Vietnamese Army at the earliest feasible date of responsibility for the defense of the territory of South Vietnam.

Since the Taft resolution includes a statement of policy concerning Indochina, the Foreign Relations Committee will have an opportunity to decide whether war powers legislation is a desirable vehicle for congressional expression of what policy in Indochina is, or should be. Many, including the writer, believe that repeal of the Gulf of Tonkin resolution left a vacuum in which there should be a congressional expression. However, prospects for unemotional consideration of war powers legislation would be enhanced if the legislation is limited to future hostilities. Senators Eagleton, Javits, and Stennis all stated this when introducing their respective proposals.

The delineation of circumstances under which, in the absence of a declaration of war, the President may initiate hostilities must not give or take away powers presently acknowledged under judicial interpretation of the Constitution. The Founding Fathers certainly intended for the President to have authority to repel sudden attacks.[81] Early decisions have sustained the President's right to use the armed forces to protect the lives and property of United States nationals abroad.[82] The power to act in anticipation of imminent attack would appear established under interpretation of the war powers.[83]

It has been argued that adoption of Item A(4) of the Javits bill [84] or paragraph 2 of Part I, of the Taft resolution,[85] stating that the President has power to deploy and commit to hostilities the armed forces to fulfill a treaty obligation, would give the President more constitutional authority than he presently possesses.[86] President Truman relied upon America's obligations under the United Nations Charter to send troops to Korea without congressional authorization. The rather oblique reliance upon the SEATO Treaty as a partial basis for our involvement in Indochina has heretofore been noted.[87]

It is agreed that none of the present multilateral treaties are self-executing.[88] An example of questions presented in consideration of these sections is illustrated by commitments in Europe under the NATO Treaty. Should American forces in Europe be attacked, there is no question that the President is empowered to act. However, should one of the NATO allies be attacked, would the President have power to act without congressional approval under the pending legislation? Does he have that power now? While the answers might vary with particular circumstances, the questions go to the merits of these proposals, as well as the credibility of the United States' present policy of "flexible response" in Western Europe.[89]

The questions also relate to Section 1 of the Eagleton resolution, which reads as follows:

"Except as authorized in section 2 or section 3 of this resolution, the President shall not commit the Armed Forces of the United States to hostilities. No treaty previously or hereafter entered into by the United States shall be construed as authorizing or requiring the Armed Forces of the United States to engage in hostilities without further Congressional authorization. It is specifically recognized that such treaties as the Charter of the United Nations, the North Atlantic Treaty, and the Southeast Asia Collective Defense Treaty do not authorize or require the President to commit the Armed Forces of the United States to engage in hostilities without a further authorization from both the Senate and the House of Representatives.[90]"

While this language would appear constitutionally pure and in accordance with the present view of the State Department that the treaties are not self-executing, NATO obligations raise delicate political and legal questions in considering the war powers proposals. Does the Javits bill give more power to the President than he already has under the Constitution and the *Neagle* decision? [91] Conversely, does the Eagleton resolution take anything away from the President?

Section 2 of the Eagleton resolution and Section 3 of the Stennis resolution each specify that authorization to commit the Armed Forces of the United States to hostilities may not be inferred from legislative enactments, including appropriations bills, which do not specifically authorize the use of such forces in armed conflict. A section of this type should be included if legislation is enacted. Congress is reluctant to raise the issue of authorization in connection with military appropriations. Once the men are in the field, there is the understandable concern that denial of appropriations would deprive the troops of weapons and supplies needed, but approval of appropriations should not imply authorization to deploy or commit military forests unless specially stated.

The Stennis resolution—Section 2, item (3)—gives the President authority to "prevent or defend against an imminent nuclear attack on the United States by the forces of any foreign government or power, but only if the President has clear and convincing evidence that such an attack is imminent; . . . ." Thus, the question of a preemptive nuclear first strike will be considered as part of these proposals. Does the President already have the power to act without authorization by Congress? Does not the type of weaponry involved and the nature of the decision to be made limit the opportunity for seeking authorization? Does the expanded view of the President's defensive war powers give the President the power to act in anticipatory self-defense? [92] Is this power implicit in Part 1, item (1) of the Taft resolution or Section 2, item (b) of the Eagleton resolution?

Each of the proposals contains a provision requiring prompt notification to Congress of any action taken under the authority spelled out in the bill or resolution. Some require periodic reports to Congress as long as hostilities are in progress. These measures, hopefully, would promote cooperation between the executive and legislative branches. The requirement in the Stennis, Eagleton and Javits proposals that Congress take action within thirty days to authorize or terminate hostilities would assure congressional participation, and place upon Congress the burden of sharing some measure of responsibility for warmaking decisions with a lessened opportunity to second guess.

If a hybrid of the Javits, Eagleton, Taft and Stennis proposals is enacted, there should be included a definition of "hostilities" as in the Eagleton resolution or "armed conflict" as in the Stennis resolution, depending upon the term used in the earlier sections.

Perhaps the most compelling arguments heard against legislation which seeks to codify the war powers, are that the problems of warmaking do not easily lend themselves to an attempt at generalized prospective codification.[93]

For this reason, legislation enacted should not be drafted to anticipate every conceivable type of military situation in which force could be employed, but define only those war powers which the Constitution grants the President. While many believe the sole objective of war power legislation is to limit the President's powers, it has been suggested that any codification of the President's war powers could result in expanding those powers.[94]

Though constitutional objections have been raised, the weight of opinion is that the proposals are constitutional.[95] Also, it is conceded that should war powers legislation be enacted and result in a confrontation between the President and the Congress, there is little chance of judicial interpretation.[96]

In preceding paragraphs, the four legislative proposals presently before the Senate Foreign Relations Committee are reviewed. If a resolution, rather than a bill, is to be enacted, the recitals as set forth in the preamble to the Eagleton resolution reflect an accurate summary of the conclusions reached in preparation of this paper. The Javits bill sets forth with clarity, supported by weight of law, the rules by which the President, as Commander-in-Chief, may use the armed forces in military hostilities without a declaration of war with two possible exceptions. First, it is questionable that the protection of American property is of sufficient cause for emergency action. Second, as heretofore noted, there are questions concerning the power of the President to act alone to comply with existing treaty commitments.[97] Any enactment should include provisions of notification and reporting to Congress and for expedition of congressional authorization or disapproval. Also, any enactment should include sections similar to those in the Stennis and Eagleton resolutions, which: (1) state that authority to use the armed forces is not to be inferred from any provision of law, including appropriations acts, unless specifically authorized; and (2) define the terms "hostilities" or "armed conflict."

The four legislative proposals before the Senate reflect thoughtful consideration of the problems inherent in codification of the war powers. Their introduction has provoked perhaps the most enlightened discussion of constitutional war powers in American history.

Of overriding importance in determining which, if any, of these proposals to enact is whether the enactment would serve long-term national interests. The ultimate objective of any legislative implementation of the Constitution must be protection of the country's well-being, especially when the legislation deals with matters directly affecting national security.

Footnotes at end of article.

V. CONCLUSION

It has been suggested that the way for Congress to resume control over the foreign and war policy of the United States is merely to resume it—that the balance may be restored by affirmative action.[98] What type of action?

It is probable that there will be legislation enacted by Congress concerning the exercise of war powers. Should war powers legislation not be enacted, however, a desirable alternative would be more consultation with Congress by Presidents before troops are committed or hostilities initiated. Secretary of State Rogers' recent testimony before the Senate Committee on Foreign Relations indicated that this cooperation will be forthcoming. The Secretary expressed a willingness to explore ways of helping Congress reenforce its own information capability on issues involving war and peace. He also acknowledged the need for effective consultation between Congress and the President. It is of interest to note that the Secretary could recall only one instance since the end of the Second World War when Congress has participated in the making of a use of force decision.[99]

One may predict that future resolutions authorizing hostilities will not contain openended features but will follow the suggestions of the National Commitments Report.[100]

There have been several suggestions for special or standing committees for the purpose of immediate and constant consultation with the President on the hostile use of military forces.[101] While these suggestions have appeal, it should be possible for consultation to take place with the leadership and committees of Congress as presently constituted. It will, of course, be necessary for the President to be willing to involve Congress in the decision making process.

During the lengthy war powers hearings held last year in the House, and this year in the Senate, there has been almost unanimous support for a reporting requirement. Should proposals which codify the war powers not receive sufficient support, it is probable that a separate resolution or bill will be enacted requiring presidential reports to Congress spelling out details of any troop commitments.[102] As aforestated, the overriding consideration in determining the advisability of enacting more complex war powers legislation is long-term national interests. It has been suggested that, in attempting to codify the war powers, Congress may fall into the old trap of trying to deal with the future by legislating the past. Also, one must ask if Congress is capable of acting with the speed, expertise, wisdom, and secrecy required today of decisions involving the war powers.

Much more is involved than a determination of war power prerogatives under the Constitution. It would hardly serve the long-term interests of the nation if any enactment resulted in a return to the congressional negativism and obstruction of the early years of this century. Nor would long-term interests be served if legislation were enacted that lacked credibility. It is doubtful if the public or the President would accept a measure subject to an interpretation that the President could not act to prevent or defend aganist nuclear attack if there were clear evidence that such an attack was imminent.

Has the world so changed that the intent of the Founding Fathers is no longer viable? If so, what is our course if we are persuaded that presidential hegemony over the war powers is in the national interest and no legisation is desirable? The Constitution can be amended or the present constitutional quandary can continue, in which neither the intent of the Founding Fathers nor public expectation that elected representatives participate in the war-making process are being realized. Another quarter century of presidential hegemony, assuming the unlikely probability of continued congressional acquiescence would, through usage, make clear and constitutional something diametrically opposed to the intent of the Founding Fathers.

Either a Constitutional amendment spelling out Presidential hegemony or continued Congressional acquiescence is ill-advised. If there was cause in the 18th century to fear concentration of the power to make war in the hands of one man, surely more is at stake today.

The effort must be to reinvest Congress with a role in use of force policy without compromising the ability of the President to act absent Congressional concurrence in emergency situations, including imminent nuclear attack. This would require that Congress have a voice in the deployment of troops.

The probability of war is closely related to the deployment of troops. The decisions of the past thirty years that have resulted in the commitment of United States forces—sometimes hostilities—have seldom been made with congressional participation. The deployment of troops often increases the chances for conventional war and conventional war increases the prospect for nuclear reliance.

Would the enactment of war powers legislation, similar to the proposals before the Senate, serve the long-term interests of the nation? There are many factors that lead one to conclude that it would, particularly if the possibilities of obstruction and negativism are reduced by a requirement of immediate consideration and action by Congress, and if the legislation is limited to future hostilities. The nation's interests would be served if congressional action initiated a fourth period of war powers history, an era of greater consultation and collaboration between the President and Congress. National unity is desperately needed in the wake of the long and divisive war that has focused so much attention upon this constitutional dilemma. Moreover, the chances of preventing an unnecessary war seem better if the decision to make was is, as the constitutional framers intended, a responsibility to be shared by Congress and the President.

If Congress will enact a war powers measure that takes into account the national security realities of the age in which we live, while at the same time giving effect to the Founding Fathers' intent, and to the public expectation rooted in their intent, that elected representatives participate in war-making decisions, this will restore balance to the war-making process and very probably serve the long-term best interests of the nation.

FOOTNOTES

* United States Senator from Virginia; Member of the Senate Foreign Relations Committee; Lecturer in International Law, College of William and Mary; LL.B., University of Virginia, 1947.

[1] S. Res. 85, 91st Cong., 1st Sess., 115 CONG. REC. 17245 (1969). This enactment provides that a national commitment exists only when evidenced by prior congressional action.

[2] Moore, *The National Executive and the Use of the Armed Forces Abroad*, 21 NAVAL WAR COLLEGE REV. 28 (1969); Reveley, *Presidential War-making: Constitutional Prerogative or Usurpation?*, 55 VA. L. REV. 1243 (1969); NOTE, *Congress, the President, and the Power to Commit Forces to Combat*, 81 HARV. L. REV. 1771 (1968).

[3] MADISON, NOTES OF THE DEBATES IN THE FEDERAL CONVENTION OF 1787, at 475–76 (1966).

[4] *Id.* at 476.

[5] *Id.*

[6] *Id.*

[7] THE FEDERALIST No. 69, at 417–18 (C. Rossiter ed. 1961) (A. Hamilton).

[8] THE WORKS OF ALEXANDER HAMILTON 249–50 (H. Lodge ed. 1904).

[9] THE WRITINGS OF JAMES MADISON 174 (G. Hunt ed. 1910).

[10] *See* DEBATES AND OTHER PROCEEDINGS OF THE CONVENTION OF VIRGINIA, CONVENED AT RICHMOND, ON MONDAY THE 2ND DAY OF JUNE 1788 (W. Prentis ed. 1789).

[11] 15 THE PAPERS OF THOMAS JEFFERSON 397 (J. Boyd ed. 1955).

[12] SENATE COMM. ON FOREIGN RELATIONS, 91ST CONG., 1ST SESS., REPORT ON NATIONAL COMMITMENTS (Rept. No. 91–129) 11–26 (Comm. Print 1969) [hereinafter cited as 1969 SENATE NATIONAL COMMITMENTS REPORT]; Reveley, *Presidential War-making: Constitutional Prerogative or Usurpation?* 55 VA. L. REV. 1243 (1969).

[13] Russell, The United States and the Power to Use Military Forces Abroad 242–43 (1967) (unpublished thesis in Fletcher School of Law and Diplomacy).

[14] Undoubtedly, Congress became sensitive to charges of lack of vision in foreign policy during the Wilson and Franklin Roosevelt Administrations. President Wilson armed merchant vessels in 1917 for defensive purposes after being denied congressional authority by a filibuster. After the war, the Senate rejected membership in the League of Nations.

Also, there is obliged to have been a later realization of the legal and factual gymnastics President Roosevelt was forced to undertake in the years prior to our entry into World War II. The Neutrality Acts of 1935, 1936, and 1937, forced Roosevelt to act unilaterally in 1940 in the exchange of destroyers for bases with Great Britain, to occupy Greenland and Iceland in 1941, and to provide convoys for supplies to Britain. The convoys led to an undeclared naval war in the Atlantic months before Pearl Harbor.

[15] 23 U.S. DEP'T OF STATE, BULL. No. 578, at 173–77 (1950).

[16] 96 CONG. REC. 9647–49 (1950) (remarks of Senator Douglas).

[17] H.R.J. Res. 9, 82d Cong., 1st Sess. (1951) stipulated that no funds should be appropriated for sending or maintaining troops abroad without the prior consent of Congress. S. Res. 99, 82d Cong., 1st Sess. (1951) concerned the number of troops which the President might send to Europe. *See* 97 CONG. REC. 3062–104, 3145–94, 3254–83, 3293 (1951).

[18] *Hearings on S. Con. Res. 8 Before the Senate Comms. on Foreign Relations and Armed Services*, 82d Cong., 1st Sess., at 92–93 (1951).

[19] 101 CONG. REC. 601 (1955) (remarks of President Eisenhower).

[20] The original resolution expressed the sense of Congress that the President possessed the authority to deal with Cuba "by whatever means may be necessary, including the use of arms." Senator Richard Russell of Georgia opposed this, stating that the resolution as originally worded made a constitutional assertion that the President had the right to declare war. The resolution as adopted was quite different.

[21] The Gulf of Tonkin Resolution was enacted even though Senator Morse argued eloquently that its passage gave to the President an unconstitutional power—the power to make war without a declaration of war. 110 CONG. REC. 18442–49 (1964) (remarks of Senator Morse).

[22] *Hearings on S. Res. 151 Before the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess., at 82 (1967).

[23] *Hearings on Vietnam Policy Proposals Before the Senate Comm. on Foreign Relations*, 91st Cong., 2d Sess., at 175 (1969).

[24] N.Y. Times, Apr. 29, 1965, § 1, at 1.

[25] The five declarations of war involved the War of 1812, the Mexican War, the Spanish-American War, World War I and World War

II. There have been approximately 150 other military operations involving our armed forces.

[26] 1969 SENATE NATIONAL COMMITMENTS REPORT, *supra* note 12.

[27] Before the Society of Newspaper Editors in Washington, D.C., on April 16, 1971, Mr. Katzenbach said: "I have a feeling that in the area of foreign affairs the majority of Congress would rather call the signals on Monday morning than on Sunday afternoon."

[28] R. TAFT, A FOREIGN POLICY FOR AMERICANS 30–31 (1951).

[29] *Id.* at 33.

[30] S. Res. 99, 82d Cong., 1st Sess., 97 CONG. REC. 3282 (1951).

[31] R. TAFT, *supra* note 28, at 36.

[32] HOUSE COMM. ON FOREIGN AFFAIRS, 91ST CONG., 2D SESS., BACKGROUND INFORMATION ON THE USE OF UNITED STATES ARMED FORCES IN FOREIGN COUNTRIES 22 (1970).

[33] For recent treatments of this subject see Tigar, *Judicial Power, the "Political Question Doctrine," and Foreign Relations*, 17 U.C.L.A.L. REV. 1135 (1970); Note, *The Supreme Court as Arbitrator in the Conflict Between Presidential and Congressional War-making Powers*, 50 BOST. U.L. REV. 78 (1970).

[34] Mora v. McNamara, 387 F.2d 862 (D.C. Cir.), *cert. denied*, 389 U.S. 934 (1967); Luftig v. McNamara, 373 F.2d 664 (D.C. Cir.), *cert. denied*, 387 U.S. 945 (1967); Mitchell v. United States, 369 F.2d 323 (2d Cir. 1966), *cert. denied*, 386 U.S. 972 (1967).

[35] Luftig v. McNamara, 373 F.2d 664, 665–66 (D.C. Cir.), *cert. denied*, 387 U.S. 945 (1967).

[36] 3 U.S. (3 Dall.) 54 (1795).

[37] 4 U.S. (4 Dall.) 37 (1800).

[38] 5 U.S. (1 Cranch) 1 (1801).

[39] *Id.* at 28.

[40] 6 U.S. (2 Cranch) 170 (1804).

[41] 8 F. Cas. 111 (No. 4186) (C.C.S.D.N.Y. 1860).

[42] *See* 7 J. MOORE, A DIGEST OF INTERNATIONAL LAW § 1093, at 112–16, § 1168 (1906).

[43] 83 U.S. (16 Wall.) 36 (1873).

[44] *Id.* at 79.

[45] *In re* Neagle, 135 U.S. 1 (1890); Perrin v. United States, 4 Ct. Cl. 543 (1868), *aff'd*, 79 U.S. (12 Wall.) 315 (1870).

[46] 104 CONG. REC. 13903–04 (1958) (statement of President Eisenhower).

[47] *See* p. 8 *supra*.

[48] *See* p. 9 *supra*.

[49] 25 U.S. (12 Wheat.) 19 (1827).

[50] *Id.* at 29–30.

[51] *See* p. 3 *supra*.

[52] 67 U.S. (2 Black) 635 (1863).

[53] *Id.* at 668.

[54] 157 U.S. 281 (1895).

[55] *Id.* at 284.

[56] 343 U.S. 579 (1952).

[57] *Id.* at 644 (Jackson, J., concurring).

[58] Concurring opinions relied upon the fact that several laws concerning labor disputes had been enacted by Congress which had the effect of withholding the power of seizure. 343 U.S. 579, 604–09 (Frankfurter, J., concurring), 655–60 (Burton, J., concurring), 662–65 (Clark J., concurring).

[59] U.S. CONST. art. II, §§ 1, 3. *See also* Note, *Congress, the President, and the Power to Commit Forces to Combat*, 81 HARV. L. REV. 1771, 1775–77 (1968).

[60] 135 U.S. 1 (1890).

* *Editor's Note*—This article was completed prior to the publication of the Pentagon Papers by the New York Times and the Washington Post, and the subsequent court test of the injunction obtained by the Government to restrain publication. In the resulting Supreme Court decision of *New York Times Co. v. United States*, 39 U.S.L.W. 4879 (U.S. June 29, 1971), which vacated the injunction, Mr. Justice Douglas, joined by Mr. Justice Black, briefly addressed himself by way of dicta to the balance in war powers dictated by the Constitution:

"The power to wage war is "the power to wage war successfully." See *Hirabayashi v. United States*, 320 U.S. 81, 93. But the war power stems from a declaration of war. The Constitution by Article I, § 8, gives Congress, not the President, power "to declare war." Nowhere are presidential wars authorized. We need not decide therefore what leveling effect the war power of Congress might have. New York Times Co. v. United States, U.S. , (1971)."

[61] U.S. DEP'T OF STATE, *The Loyalty of United States Participation in the Defense of Vietnam*, 54 DEP'T OF STATE BULL. 474 (1966); Address by William H. Rehnquist, "The President's Constitutional Authority to Order the Attack on the Cambodian Sanctuaries," Society of International Law, June 16, 1970; Statement of Secretary of State William P. Rogers, Senate Comm. on Foreign Relations, May 14, 1971.

[62] *See* note 18 *supra*.

[63] 1969 SENATE NATIONAL COMMITMENTS REPORT, *supra* note 12, at 38.

[64] In 1930, the United States concluded 25 treaties and 9 executive agreements. As of January 1, 1969, the United States had a total of 909 treaties and 3,973 executive agreements.

[65] Those treaties were the Rio Treaty, the North Atlantic Treaty, the ANZUS Treaty the SEATO Treaty, and bilateral treaties with the Philippines and the Republic of China on Formosa, Korea and Japan.

[66] *See* note 22 *supra*.

[67] *Hearings on S. 731, S.J. Res. 18, and S.J. Res. 59 Before the Senate Comm. on Foreign Relations*, 92d Cong., 1st Sess. (1971). Note therein the following testimony and the questions asked the witnesses by the author: Senator Barry Goldwater (April 23, 1971); Mr. George Reedy (April 26, 1971); Secretary of State William Rogers (May 14, 1971).

[68] 1969 SENATE NATIONAL COMMITMENTS REPORT, *supra* note 12, at 33.

[69] *Hearings on Separation of Powers Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess. 163–79 (1967).

[70] *Hearings on S. 731, S.J. Res. 18, and S.J. Res. 59, supra* note 67, at 17 (March 8, 1971).

[71] *Id.* (April 23, 1971).

[72] H.J. Res. 1, 92d Cong., 1st Sess. (1917). *See* appendix 1.

[73] S. 731, 92d Cong., 1st Sess. (1971). *See* appendix 2.

[74] S.J. Res. 18, 92d Cong., 1st Sess. (1971). *See* appendix 3.

[75] S.J. Res. 59, 92d Cong., 1st Sess. (1971). *See* appendix 4.

[76] S.J. Res. 95, 92d Cong., 1st Sess. (1971). *See* appendix 5. Senator Lloyd Bentsen of Texas later introduced a bill similar to the Stennis resolution, and testified on it before the Senate Foreign Relations Committee on July 27, 1971. He delivered his first speech on the Senate floor on his bill on July 28, 1971.

[77] *See* appendix 2.

[78] *See* appendix 4.

[79] *See* appendix 5.

[80] *See* appendix 3.

[81] *See* note 3 *supra*, at 476.

[82] *See* notes 41–45 *supra*.

[83] *See* notes 49, 50 *supra*.

[84] *See* appendix 2.

[85] *See* appendix 3.

[86] *Hearings on S. 731, S.J. Res. 18, and S.J. Res. 59, supra* note 67. See therein Memorandum of Lawyers Comm. on American Policy toward Vietnam.

[87] *See* note 22 *supra*.

[88] *Hearings on S. 731, S.J. Res. 18, and S.J. Res. 59, supra* note 67. See therein testimony of Senator Taft, Senator Goldwater and Secretary of State Rogers.

[89] Briefly, the doctrine of "flexible response" anticipates a conventional response by the NATO alliance to a conventional attack upon a NATO nation that would provide at least a period of two to three days for negotiation and determination of the necessity or advisability of using nuclear weapons.

[90] *See* appendix 4.

[91] *See* notes 59, 60 *supra*.

[92] *See* notes 49–53 *supra*.

[93] *Hearings on Congress, the President, and War Powers Before the House Comm. on Foreign Affairs*, 91st Cong., 2d Sess. (1970). Note therein statements of Dr. Alexander M. Bickel (June 23, 1970) and Dr. W. T. Mallison, Jr. (June 23, 1970). Dr. Bickel later spoke more favorably concerning efforts to codify the war powers, endorsing with reservations the Javits bill. *Hearings on S. 731, S.J. Res. 18, and S.J. Res. 59, supra* note 67 (March 8, 1971).

[94] *Id.* at 303.

[95] *Id.* at 49–50. See therein statements of Henry S. Commager (March 8, 1971); Richard B. Morris (March 9, 1971); Alfred H. Kelly (March 9, 1971); Alpheus T. Mason (March 25, 1971); Alexander M. Bickel (July 26, 1971); William D. Rogers (July 27, 1971).

[96] *Hearings on S. 731, S.J. Res. 18, and S.J. Res. 59, supra* note 67. Note therein testimony of Senator Goldwater and John N. Moore.

[97] *See* notes 86, 88, 89 *supra*. Also, the argument has been advanced that if a President, as Commander-in-Chief, acts to deploy for combat pursuant to a treaty, this action should be reviewed by Congress and either approved or condemned. The theory is that the Senate, by consenting to a treaty, cannot constitutionally bind the House to render an automatic war decision. *Hearings on Congress, the President, and War Powers, supra* note 93, at 391.

[98] *Hearings on S. 731, S.J. Res. 18, and S.J. Res. 59, supra* note 67, at 48 (testimony of Dr. Alexander M. Bickel).

[99] *Id.* (testimony of Secretary of State William Rogers).

[100] *See* p. 19 *supra*.

[101] *See* notes 68–70 *supra*.

[102] *See* appendix 1.

[Appendix 1, 92d Congress, 1st Session, H.J. Res. 1, in the House of Representatives, January 22, 1971]

Mr. ZABLOCKI introduced the following joint resolution; which was referred to the Committee on Foreign Affairs

JOINT RESOLUTION CONCERNING THE WAR POWERS OF THE CONGRESS AND THE PRESIDENT

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress reaffirms its powers under the Constitution to declare war. The Congress recognizes that the President in certain extraordinary and emergency circumstances has the authority to defend the United States and its citizens without specific prior authorization by the Congress.

SEC. 2. It is the sense of Congress that the President should seek appropriate consultation with the Congress before involving the Armed Forces of the United States in armed conflict, and should continue such consultation periodically during such armed conflict.

SEC. 3. In any case in which the President without specific prior authorization by the Congress—

(1) commits United States military forces to armed conflict;

(2) commits military forces equipped for combat to the territory, airspace, or waters of a foreign nation, except for deployments which relate solely to supply, repair, or training of United States forces, or for humanitarian or other peaceful purposes; or

(3) substantially enlarges military forces already located in a foreign nation;

the President shall submit promptly to the Speaker of the House of Representatives and to the President of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating his action;

(B) the constitutional, legislative, and treaty provisions under the authority of which he took such action, together with his

reasons for not seeking specific prior congressional authorization;

(C) the estimated scope of activities; and

(D) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

SEC. 4. Nothing in this joint resolution is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties.

[Appendix 2, 92d Congress, 1st Session]

S. 731

Mr. JAVITS introduced the following bill; which was referred to the Committee on Foreign Relations

A bill to make rules respecting military hostilities in the absence of a declaration of war

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That use of the Armed Forces of the United States in military hostilities in the absence of a declaration of war be governed by the following rules, to be executed by the President as Commander in Chief:

A. The Armed Forces of the United States, under the President as Commander in Chief, may act—

1. to repel a sudden attack against the United States, its territories, and possessions;

2. to repel an attack against the Armed Forces of the United States on the high seas or lawfully stationed on foreign territory;

3. To protect the lives and property, as may be required, of United States nationals abroad; and

4. to comply with a national commitment resulting exclusively from affirmative action taken by the executive and legislative branches of the United States Government through means of a treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment, where immediate military hostilities by the Armed Forces of the United States are required.

B. The initiation of military hostilities under circumstances described in paragraph A, in the absence of a declaration of war, shall be reported promptly to the Congress by the President as Commander in Chief, together with a full account of the circumstances under which such military hostilities were initiated.

C. Such military hostilities, in the absence of a declaration of war, shall not be sustained beyond thirty days from the date of their initiation except as provided in legislation enacted by the Congress to sustain such hostilities beyond thirty days.

D. Authorization to sustain military hostilities in the absence of a declaration of war, as specified in paragraph (A) of this section may be terminated prior to the thirty day period specified in paragraph (C) of this section by joint resolution of Congress.

SEC. 2. (A) Any bill or resolution, authorizing continuance of military hostilities under paragraph C (section 1) of this Act, or of termination under paragraph D (section 1) shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it originates, be considered reported to the floor of such House no later than one day following its introduction, unless the Members of such House otherwise determine by yeas and nays; and any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported from such committee within one day after it is referred to such committee, unless the Members of the House referring it to committee shall otherwise determine by yeas and nays.

(B) Any bill or resolution reported pursuant to subsection (A) of section 2 shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after such report, unless such House shall otherwise determine by yeas and nays.

SEC. 3. This Act shall not apply to military hostilities already undertaken before the effective date of this Act.

[Appendix 3, 92d Congress, 1st Session, S.J. Res. 18, in the Senate of the United States, January 27 (legislative day, January 26), 1971]

Mr. Taft introduced the following joint resolution; which was referred to the Committee on Foreign Relations

JOINT RESOLUTION TO DEFINE THE PRINCIPLES WHICH SHALL GOVERN THE DEPLOYMENT OF THE ARMED FORCES OF THE UNITED STATES BY THE PRESIDENT TO EXPRESS U.S. FOREIGN POLICY OBJECTIVES IN SOUTHEAST ASIA

Whereas wide discussion and differences of opinion have arisen among the members of the body politic with respect to the power of the President as Commander in Chief to deploy the Armed Forces of the United States beyond its territorial limits and to commit such Armed Forces to combat, and

Whereas the Congress has, through acquiescence and overt action, sanctioned on numerous occasions the deployment of the Armed Forces of the United States beyond its territorial limits and commitment of such Armed Forces to combat without prior express authorization of a declaration of war by the Congress, and

Whereas in order to eliminate the confusion caused by the previous acquiescence and overt actions by Congress, there is a need for a clear statement of policy by the Congress as to the foreign policy of the United States in Southeast Asia, the deployment of Armed Forces by the President generally, and specifically their deployment in fulfillment of such foreign policy: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

PART I

The deployment and commitment to combat of the Armed Forces of the United States in, within the territorial waters of, or over the territory or territorial waters of any other nation is authorized and shall be undertaken only with specific prior authorization of Congress by law; except that the President, as Commander in Chief, is authorized to deploy and commit to combat such Armed Forces at his sole discretion:

(1) When he finds that the territory or the Armed Forces of the United States are under attack or imminent threat of attack; or

(2) When he finds that such deployment is necessary to fulfill a treaty obligation of the United States not qualified by constitutional or treaty contained limitations of conditions; or

(3) When he finds that such deployment is necessary to effectuate a declaration of war acted on by the Congress; or

(4) When he finds that such deployment is necessary to exercise the inherent right of self-defense of the Nation or its nationals pursuant to established principles of international law or article 51 of the Charter of the United Nations.

The President shall notify the Congress within twenty-four hours after any such finding of all action he has taken at his sole discretion pursuant to any such finding. In the event the Congress is not in session, then the President shall convene the Congress in an extraordinary session and so notify the Congress within forty-eight hours after such finding. This authorization shall terminate upon the passage of a concurrent resolution to that effect by both Houses of Congress.

PART II

The Congress hereby declares that it is the policy of the United States that each of the several free Southeast and South Asian nations should have the primary responsibility for the defense of its own territorial integrity: *Provided, however,* That it is the policy of the United States where requested and where needed to furnish economic and military material assistance to such nations whose territorial integrity is threatened by armed aggression. The Congress specifically authorizes the continued deployment of the Armed Forces of the United States in the territorial limits of the Republic of South Vietnam for such time and in such manner as the President, as Commander in Chief, shall deem necessary and appropriate to accomplish a responsible and irreversible withdrawal of such Armed Forces of the United States and the assumption by the Armed Forces of the Republic of South Vietnam at the earliest feasible date of the responsibility for the defense of the territorial integrity of the Republic of South Vietnam: *Provided further,* That the Armed Forces of the United States should not be deployed or committed to combat in Indochina in territory other than that of the Republic of South Vietnam, except as provided in part I hereof. This declaration of policy and authorization shall terminate upon the passage of a concurrent resolution to that effect by both Houses of Congress.

[Appendix 4, 92d Congress, 1st Session, S.J. Res. 59, in the Senate of the United States, March 1 (legislative day, February 17), 1971]

Mr. Eagleton introduced the following joint resolution; which was referred to the Committee on Foreign Relations

JOINT RESOLUTION REGARDING THE POWERS OF THE CONGRESS AND THE PRESIDENT TO COMMIT THE ARMED FORCES OF THE UNITED STATES TO HOSTILITIES

Whereas the framers of the Constitution of the United States intended the separation of powers doctrine to apply to the initiation of hostilities as a means for insuring collective judgment, whenever possible, before the Armed Forces of the United States were committed to such hostilities; and

Whereas the power to declare war was assigned to the Congress and this power authorizes the Congress to initiate, define, and limit the scope of hostilities involving the Armed Forces of the United States; and

Whereas the power to make rules regulating and governing the Armed Forces of the United States was assigned to the Congress, and this power authorizes the Congress to enact laws respecting the raising and use of such Armed Forces including their deployment in any foreign country; and

Whereas the power to appropriate moneys to support the Armed Forces of the United States was also assigned to the Congress, and this power authorizes the Congress to allocate funds so as to circumscribe the overall scope of hostilities and the uses of the Armed Forces of the United States; and

Whereas the Commander in Chief and Chief Executive powers were assigned to the President and those powers authorize the President to conduct hostilities initiated by the Congress and to respond to, and repel, attacks on the United States (including its territories and possessions), its Armed Forces, and, under certain circumstances to rescue endangered citizens of the United States located in foreign countries: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That:

SECTION 1. Except as authorized in section 2 or section 3 of this resolution, the Presi-

dent shall not commit the Armed Forces of the United States to hostilities. No treaty previously or hereafter entered into by the United States shall be construed as authorizing or requiring the Armed Forces of the United States to engage in hostilities without further Congressional authorization. It is specifically recognized that such treaties as the Charter of the United Nations, the North Atlantic Treaty, and the Southeast Asia Collective Defense Treaty do not authorize or require the President to commit the Armed Forces of the United States to engage in hostilities without a further authorization from both the Senate and the House of Representatives.

SEC. 2. The President may commit the Armed Forces of the United States to hostilities to the extent authorized by Congress through a declaration of war, statute, or joint resolution, but authorization to commit the Armed Forces of the United States to hostilities may not be inferred from legislative enactments, including appropriation bills, which do not specifically include such authorization. The Congress recognizes that during such authorized hostilities against an enemy country or enemy forces, the President's powers as Commander in Chief and Chief Executive provide him with the further authority, regardless of the limitations contained in the specific declaration of war or other authorizing statute or resolution, to order the Armed Forces of the United States to deliberately enter, invade, or intrude upon the territory or airspace of a country with which the United States is not then engaged in hostilities:

(a) when in hot pursuit of fleeing enemy forces who have attacked, or engaged in battle with, the Armed Forces of the United States, and then retreated to the territory or airspace of such country, to the extent necessary to repel such attack or complete such battle, or

(b) when a clear and present danger exists of an imminent attack on the United States or the Armed Forces of the United States by enemy troops located in such country, to the extent necessary to eliminate such danger.

SEC. 3. In the absence of a governing congressional authorization described in section 2, the President may commit the Armed Forces of the United States to hostilities, to the extent reasonably necessary to:

(a) repel an attack on the United States by military forces with whom the United States is not engaged in hostilities at the time of such attack and to eliminate or reduce the effectiveness of any future attacks by such military forces which are committing the attack being repelled; and

(b) repel an attack on the Armed Forces of the United States by military forces with whom the United States is not engaged in hostilities at the time of such attack and concurrently to eliminate or reduce any clear and present danger of future attacks by the military forces which are committing the attack being repelled; and

(c) withdraw citizens of the United States, as rapidly as possible, from any country in which such citizen, there due to their own volition and with the express or tacit consent of the government of such country, are being subjected to an imminent threat to their lives, either sponsored by such government or beyond the power of such government to control: *Provided,* That the President shall make every effort to terminate such a threat without using the Armed Forces of the United States: *And provided further,* That the President shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States.

SEC. 4. The commitment of the Armed Forces of the United States to hostilities pursuant to section 3 of this resolution shall be reported promptly by the President to the Congress, together with a full account of the circumstances under which such hostilities were initiated, the estimated scope of such hostilities, and the consistency of such hostilities, with the provisions of section 3. The question of continuing or terminating any such hostilities shall be decided upon by the Congress as soon as possible and not more than thirty days from the day on which hostilities were initiated, under the following procedures:

(a) any bill or resolution, authorizing the continuance or termination of military hostilities if sponsored or cosponsored by one-third of the Members of the House of Congress in which it originates, shall be considered reported to the floor of such House no later than one day following its introduction, unless the Members of such House otherwise determine by yeas and nays; and any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported from such committee within three days after it is referred to such committee, unless the Members of the House referring it to committee shall otherwise determine by yeas and nays; and

(b) any bill or resolution reported pursuant to subsection (a) of this section shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after such report, unless such House shall otherwise determine by yeas and nays.

SEC. 5. In any case where the Armed Forces of the United States have been committed to authorized hostilities, the President shall, while such hostilities are in progress, report to the Congress periodically on the status of such hostilities, as well as on the estimated scope and length of such hostilities.

SEC. 6. For purposes of this resolution, the term "hostilities" includes land, air, or naval actions taken by the Armed Forces of the United States against other armed forces or the civilian population of any other nation, the deployment of the Armed Forces of the United States outside of the United States under circumstances where an imminent involvement in combat activities with other armed forces is a reasonable possibility, or the assignment of members of the Armed Forces of the United States to accompany, command, coordinate, or participate, in the movement of regular or irregular armed forces of any foreign country when such foreign armed forces are engaged in any form of combat activities.

SEC. 7. This resolution shall not apply to hostilities commenced before the enactment of the resolution.

[Appendix 5, 92d Congress, 1st Session, S.J. Res. 95, in the Senate of the United States, May 11, 1971]

Mr. Stennis introduced the following joint resolution; which was referred to the Committee on Foreign Relations

JOINT RESOLUTION RELATING TO THE AUTHORITY OF THE PRESIDENT TO USE THE ARMED FORCES OF THE UNITED STATES IN ARMED CONFLICT

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That except as provided in sections 2 and 3 of this joint resolution, the President may not use the Armed Forces of the United States in any armed conflict.

SEC. 2. The President may, in the absence of a specific authorization by law as provided in section 3 of this joint resolution, use the Armed Forces of the United States in conflict to the extent reasonably necessary—

"(1) to repel any armed attack on the United States by the forces of any foreign government or power and to take action that will protect the United States against future armed attacks by such foreign government or power;

(2) to repel an armed attack on the Armed Forces of the United States by forces of any foreign government or power and, concurrently, to protect the Armed Forces of the United States against any imminent danger of future attacks by the forces of such foreign government or power;

(3) to prevent or defend against an imminent nuclear attack on the United States by the forces of any foreign government or power, but only if the President has clear and convincing evidence that such attack is imminent; and

(4) to evacuate citizens of the United States from any foreign country in which they are located when such citizens are in such country with the express or tacit consent of the government of such country and their lives are being subjected to an imminent threat by such government or by persons or forces beyond the control of such government.

SEC. 3. The President is authorized to use the Armed Forces of the United States in armed conflict pursuant to a declaration of war or other specific statutory authority, but authority to use the Armed Forces of the United States in armed conflict shall not be inferred from any provision of law, including any provision contained in any appropriation Act, unless such provision specifically authorizes the use of such forces in armed conflict.

SEC. 4. (a) Whenever the Armed Forces of the United States are used in armed conflict under any of the circumstances described in section 2 of this joint resolution, the President shall promptly report that fact to the Congress and shall include in such report a detailed account of the reasons for so using the Armed Forces of the United States, his estimate of the scope of the armed conflict, and the justification for the use of such forces under section 2 of this joint resolution. Upon receiving any such report, the Congress shall decide, within thirty days after the first day on which Armed Forces of the United States were committed to armed conflict, whether the authority to so use the Armed Forces shall be extended or terminated. The following procedures shall be applicable to any such question:

(1) Any bill or resolution, authorizing the continued use of the Armed Forces in armed conflict under authority of section 2 of this joint resolution shall, if cosponsored by one-third or more of the total number of Members of the House of Congress in which such bill or resolution originates, be considered reported to the floor of such House no later than one day following its introduction; unless the Members of such House determine otherwise by yeas and nays; and any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported from such committee within one day after it is referred to such committee, unless the Members of the House referring it to committee determine otherwise by yeas and nays.

(2) Any bill or resolution reported pursuant to paragraph (1) of this subsection shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after such report, unless such House shall determine otherwise by yeas and nays.

(b) In no case shall the Armed Forces of the United States be used in any armed conflict under any of the circumstances described in section 2 of this joint resolution for any period exceeding thirty days after the first day on which such forces were first engaged in such conflict unless the Congress has specifically authorized the use of such Armed Forces in such conflict for a longer period.

SEC. 5. Whenever Armed Forces of the United States are engaged in armed conflict in any foreign country, the President shall, so long as such forces continue to be so engaged, report to the Congress periodically on

the status of the armed conflict as well as on the scope and expected duration of such conflict, but in no event shall he report to the Congress less often than every six months.

SEC. 6. The provisions of this joint resolution shall not apply to—

(1) the armed conflict in the Republic of South Vietnam in which the Armed Forces of the United States were engaged on the date of enactment of this joint resolution, or

(2) military activities carried out against the military forces of North Vietnam, or against forces allied with North Vietnam, in North Vietnam, Laos, Cambodia, or the waters surrounding the Indochina Peninsula, so long as such military activities are directly related to the conflict referred to in paragraph (1) of above.

SEC. 7. As used in this joint resolution, the term "armed conflict" includes (1) land, air, and naval actions taken by the Armed Forces of the United States against the military forces or civilians of any foreign country or government, (2) the deployment of the Armed Forces of the United States outside of the United States under circumstances that present a reasonable possibility of the use of arms against the military or civilian forces of a foreign country or government, and (3) the assignment of members of the Armed Forces of the United States to accompany, command, coordinate, or participate in the movement of regular or irregular military forces of any foreign country or government when such military forces are engaged in any form of combat activity.

Mr. ROTH. Mr. President, the war powers bill (S. 2956) which we have before us today, reflects a deep and growing concern here in Congress that our constitutional authority over the initiation and conduct of war has been seriously eroded. Since World War II, Presidential predominance in warmaking has become the rule, and congressional participation in decisions to use our Armed Forces has been secondary and, too often, after the fact. Because I share the general concern about this trend and because I would like to see the Congress regain a meaningful role in deciding whether this country is to be at war, I joined last year as a cosponsor of Senate Joint Resolution 95, a measure dealing with the war powers introduced by the distinguished chairman of the Armed Service Committee.

I am, therefore, sympathetic to the objectives of S. 2956. While President Nixon is to be congratulated for the progress he has made in reducing American military involvement overseas, particularly in Southeast Asia, and while he is also to be commended for the steps he has taken to insure that our defense commitments to foreign nations are commensurate with our national interests and our capabilities, it may nevertheless be desirable for Congress, through legislation such as S. 2956, to define more clearly the limits of Presidential and congressional authority to involve our Nation in war.

Thomas Jefferson once wrote that—

> War is the moment when the energy of a single hand shows itself in its most seducing form.

Jefferson was referring to the tendency of war to exalt strong, centralized leadership, to place a premium on speed, decisiveness and secrecy, and thereby to foster the expansion of executive power at the expense of that of the legislature. Jefferson's warning about the strains war can put on our democratic institutions is on which we would be unwise to ignore.

At the same time, we must recognize that in an age of nuclear weapons and long-range missiles, swift action may be necessary to protect our Nation from attack. We must also recognize that our ability to avoid wars depends in a very important way on the defense commitments we have extend to other nations. It is these realities of our international position that have contributed to the growth of the President's power. We cannot ignore them in framing legislation on the war powers; otherwise, the legislation we adopt will be irresponsible and ineffectual.

We should be especially careful to examine the practical effects of the war powers bill on our international defense arrangements, particularly those relating to NATO. It has been alleged that if we in Congress adopt the war powers bill, with its requirement for congressional approval each time our Armed Forces are used overseas, we will cast doubt on this country's willingness to back up its treaty commitments with armed force. The implication is that when a decision is needed on whether to use our Armed Forces to assist our allies, Congress will be unable or unwilling to act, or that it will not act swiftly enough to meet the threat. What this argument really suggests is that Congress cannot be trusted to act with wisdom and judgment in these vital matters, and this is a contention I am extremely reluctant to accept.

I hope that during the course of the debate on this measure, the Senate will be able to establish clearly what, if any, limitations S. 2956 would place on our ability to take any action we might reasonably expect to find necessary to uphold our commitments. We should insist that those who claim this bill will undermine our treaty commitments demonstrate—in concrete and realistic terms—exactly how they believe it would do so. Lacking clear and concrete evidence. I see no reason why we should be deterred from acting to insure that Congress is in a better position to exercise its undoubted constitutional responsibilities with regard to the conduct of war.

Mr. President, on the whole, I see much potential benefit in S. 2956. By clearly asserting Congress right to have a say in the use of our troops overseas, it assures that the collective judgment of the President and the Congress will be brought to bear on such vital questions and reduces the likelihood that we will find ourselves entangled in extended military operations we may later regret.

A LETTER FROM SECRETARY ROGERS CONCERNING WAR POWERS BILL

Mr. ALLOTT. Mr. President, prompted by the Secretary of State's cogent and forceful testimony before the Foreign Relations Committee with regard to the war powers bill—its constitutionality, and its prudence—last Thursday I wrote to Mr. Rogers seeking clarification and amplification with regard to various matters.

I am pleased to report that I have a letter from Mr. Rogers in response. I ask unanimous consent that my letter and his be printed in full in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ALLOTT. Mr. President, all Senators, regardless of their current disposition with regard to the war powers bill, should be pleased to have at hand the thoughtful comments of this responsible man.

Some Senators have announced support for this bill. Other Senators have announced equally firm opposition to the bill. It should be noted that many of those who have announced support for this bill are not wedded to every clause and comma of this bill. On the contrary, they are only committed to achieving some clarification of the distribution of responsibilities between the legislative and executive branches with regard to the conduct of armed conflict.

And it also should be noted that many of those who are firmly opposed to this bill are not opposed to legislation in this area. On the contrary, those who are opposed believe that some legislation in this field is possible or even desirable. What they object to about this bill, and what accounts for the vigor of their objection, is the belief that the very most grave issues are at stake, and that this particular bill is unwise in terms of these grave issues.

I think it is fair to say that in our free Republic, in this dangerous world, the gravest issues are either those of constitutionality, or those directly affecting national security. Remarkably enough, this bill raises profound issues of both kinds.

It is for this reason that I believe the one thing the Senate must not do is act hastily. We can ill afford to make a mistake which would radiate imperfections into our constitutional law, or into our national security posture.

Indeed, if the bill is as important as its most enthusiastic proponents say it is, then its importance must derive from the very fact that it does touch upon matters fundamental to the orderly process of the Government, and the safety and survival of the Nation. And, on the other hand, if the bill is as ill conceived as its opponents say it is, then that also must be because it touches these vital matters.

Regardless which side is correct, and regardless of which side prevails, one thing is clear. On a matter which arouses such intense feelings, and which, by common consent, is of considerable importance to the Nation, the Senate would ill-serve the people, and would be untrue to its nature, if it did not fully explore all the dimensions of the controversy.

I can see one and only one way to assure that no significant number of Senators will feel that the Senate has acted without proper regard for the gravity of the matter. The solution is to refer this bill to the Judiciary Committee for hearings. The hearings can involve the finest constitutional scholars, whose testimony should resolve the many questions being voiced about the constitutionality of the bill. In addition, these hearings, by their very nature, would shed light on the strategic and military

implications of the bill. After all, one cannot thoroughly examine the constitutional question of war powers without extending the investigation beyond questions of legal theory and into the complicated considerations of strategic realities, and the problems of military command in this dangerous world.

It is my hope that the Senate, responding to the concerns expressed by the Secretary of State, and mindful of its nature as a deliberative body, will refer this bill to the Judiciary Committee.

EXHIBIT 1

MARCH 23, 1972.

HON. WILLIAM P. ROGERS,
Secretary, Department of State, Washington, D.C.

DEAR MR. SECRETARY: The United States Senate is about to consider S. 2956, the "War Powers Act of 1971".

Not being a member of the Senate's Committee on Foreign Relations, I have not had the experience of participating in the Committee's hearings and deliberations on this proposed legislation. In preparation for the Senate's consideration of this bill, however, I have been reviewing the record of those hearings, and I have been most interested by the thoughtful testimony you gave before the Committee on May 14, 1971, in which you discussed in detail the historical and judicial precedents in this area and the weighty constitutional and foreign policy issues raised by this legislation.,

After carefully reviewing your testimony and the remainder of the Committee record, I am concerned to know the full implications of such legislation, which to my mind could raise constitutional questions. I am particularly concerned that this legislation, if it were to become law, could unduly circumscribe the ability of the United States to react in crisis situations as required by our national interest.

I know that you, Mr. Secretary, have personally devoted a great deal of thought to this legislation, and to the important questions it raises. I therefore would very much appreciate hearing your current views on this legislation, and particularly your assessment of the effect its enactment might have with respect to the North Atlantic alliance and the situation in the Eastern Mediterranean. I should appreciate also having the views of Secretary Laird, whose responsibilities would likewise be affected by this proposed legislation.

As always, I appreciate your kind consideration.

Sincerely yours,

GORDON ALLOTT,
U.S. Senator.

THE SECRETARY OF STATE,
Washington, March 24, 1972.

HON. GORDON ALLOTT,
U.S. Senate.

DEAR SENATOR ALLOTT: I deeply appreciate your interest in the difficult questions raised by the war powers legislation currently pending in the Senate (S. 2956), as expressed in your letter to me of March 23, 1972. Secretary Laird will be writing to you separately.

My own views on this legislation, reflected in my testimony before the Senate's Committee on Foreign Relations on May 14, 1971, are that it is unconstitutional and unwise.

A single example clearly demonstrates the unconstitutionality of this legislation. The bill clearly provides that the President may not sustain any military action, including defense of the territory of the United States itself, beyond a period of thirty days, unless Congress expressly acts to authorize a constitution beyond that period. There is no doubt under the Constitution, however, that the President has the authority to defend the territory of the United States with all the resources at his command for whatever period is required. Indeed Senator Cooper, in his individual views set forth in the report of the Committee on Foreign Relations on S. 2956, pointed out that Congress has no authority to limit the exercise of Presidential authority to a specified period. In so doing Senator Cooper noted that doubts were raised on this same point even by the one professor of constitutional law who testified in favor of the bill.

Clearly any legislative attempt to alter our historic constitutional system, particularly in such a critical area, should be cast as an amendment to the Constitution, rather than as a simple statute. Our tripartite form of government, with its system of checks and balances, already allocates "war powers" between the Executive Branch (with the President having the powers of Commander-in-Chief and Chief Executive) and the Congress (which has the power to appropriate funds, the power to raise and support armies and navies, and the power to declare war, as well as others). This allocation of powers is inherent in our constitutional system, which has survived the test of time for nearly two centuries. It is basic to our system, and should be changed, if at all, only by constitutional amendment. An attempt to spell out in detail all of those circumstances in which the President, in the absence of express congressional authorization, would be permitted to use our armed forces, as the War Powers Bill attempts to do, is such a momentous task as to require the most meticulous and thoughtful consideration, as provided in cases of amendment of the Constitution.

I believe the proposed war powers legislation is unwise for many reasons, but particularly because it would, in my opinion, increase the risks of the United States becoming involved in unwanted hostilities rather than decrease such risks. Under our present constitutional system a President necessarily will move with extreme caution before committing our armed forces to a significant military involvement anywhere in the world, carefully assuring himself that there is current congressional support for his action. Historically this has always been so, and it was true when this nation embarked upon large scale involvement in Vietnam, as passage of the Tonkin Gulf Resolution attested. The War Powers Bill, however, grants the President *carte blanche* to commit our armed forces to hostilities in enumerated situations for a period of thirty days. The tendency of this legislation could well be to make future Presidents less cautions, since they would have clear statutory authority to act for at least thirty days and might assume, perhaps correctly, that Congress would be unlikely at the end of this period to order cessation of what may in the meantime have become a major operation.

I note that another unfortunate effect of the bill would be to deprive the President of the ability to make military deployments in furtherance of our foreign policy interests without specific congressional authorization. As I said in my testimony before the Committee on Foreign Relations:

"Moreover, requiring prior congressional authorization for deployment of forces can deprive the President of a valuable instrument of diplomacy which is used most often to calm a crisis rather than inflame it. For example, such a restriction could seriously limit the ability of the President to make a demonstration of force to back up the exercise of our rights and responsibilities in Berlin or to deploy elements of the 6th Fleet in the Mediterranean in connection with the Middle East situation."

Thus if the War Powers Bill were to become law our North Atlantic Treaty allies might well come to question the will and ability of the United States to react in its national interest in a crisis, and doubt might well be cast on our role in the Eastern Mediterranean, where we have striven so hard to help keep the peace.

I wish to make it clear that the Administration is not opposed in principle to congressional action seeking to clarify the exercise of shared war powers by the Legislative and Executive Branches. For example, the Administration has not opposed House Joint Resolution 1, the Joint Resolution concerning the war powers of the Congress and the President, which has passed the House of Representatives and does not present the serious constitutional and other problems posed by S. 2956.

S. 2956, however, in my opinion, would violate the Constitution and, far from preventing future military involvement, would increase the likelihood of such involvement for the reasons stated above. Therefore I strongly oppose the enactment of S. 2956.

With best personal regards,

Sincerely,

WILLIAM P. ROGERS.

TIME TO FERRET OUT THE REAL CULPRITS IN THE FOOD COSTS

Mr. CURTIS. Mr. President, Secretary Butz made a statement entitled "Time To Ferret Out the Real Culprits in the Food Costs." It is an excellent statement. It points out that 62 cents out of every food dollar goes to persons other than the farmers who produce the food.

It also points out that in the last 20 years prices for food products at the farm gate have gone up 6 percent while consumers' food prices at the store have gone up 45 percent.

Mr. President, it is very important that we give consideration to these matters. Some individuals who are engaged in the grocery business are misleading the public; they are stating untruths; they are attempting to turn the consuming public against agriculture, and the facts are not well founded. These same people are silent about the other causes of rising food prices.

Mr. President, I ask unanimous consent to have printed in the RECORD the entire statement by Secretary Butz.

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

TIME TO FERRET OUT THE REAL CULPRITS IN FOOD COSTS

WASHINGTON, March 25.—Secretary of Agriculture Earl L. Butz said today the time has come to ferret out the real culprits in the cost of food and hold them up by the back of the neck for everyone to look at.

"The place to look is in the processing and distribution system between the farmer's gate and the consumer's table. That's where 62 cents out of every food dollar goes—and that's where the bulge in costs has been ballooning," Secretary Butz said.

"President Nixon pointed out on Friday that the spread between farmers and consumers is too wide. And he was correct in pointing out that it is a mistake and totally unfair to make the farmer the scapegoat.

"The simple facts show that in the last 20 years farmers' prices for food products at the farm gate have gone up 6 peroent; while consumers' food prices at the store have gone up 43 percent. Meantime, the farmers' share of the consumers' food dollar has shrunk from 49 cents to 38 cents," Secretary Butz pointed out.

Mr. Butz said the increase in food costs is in such things as freight rates; container costs; added services and conveniences built

into frozen, pre-cooked, pre-mixed, pre-peeled and prepared foods; more meals eaten out where service and "atmosphere" cost more than the food, and higher wages up and down the line.

"Those costs in processing and distribution are hard costs," Secretary Butz said. "Once these costs go up, they harden and stay up. By contrast, prices of farm products are soft costs—they move up and down from month-to-month, season-to-season and from year-to-year—but they don't harden. For instance, farmers hog prices fell 35 percent in four months time two years ago. And right now, farmers' cattle prices are 4½ percent less than a month ago and hog prices are 8 percent less than a month ago.

"I welcome the public hearings on food costs that the Price Commission will hold on April 12. If farmers were causing the inflationary bulge, I'd run for cover," Mr. Butz said. "Instead, I'm going to stand up and tell the truth about farmers. Any high school student in his first economics course knows that the best counter-move to inflation is to increase productivity. Well, farmers' productivity per man hour is 3.3 times more than it was 20 years ago—and that happens to be twice as fast a rate of productivity increase as in manufacturing industries.

"Farmers are producing 2½ times as much beef as 20 years ago, and four times as much Choice beef. They must be doing a good job—because people are voluntarily eating twice as much beef per person as 20 years ago. Farmers are giving them what they want; farmers are responding magnificently. Yet cattle prices just recently got up to levels of 20 years ago. And those are much cheaper dollars now.

"The public is being fed a lot of malarky about meat prices," Secretary Butz said. "One food chain in the Washington, D.C. area took full-page advertisements in newspapers this week urging people to eat less meat. They advised consumers to eat fish instead. Well, since the government's base period of 1967, fish prices have increased more than beef.

"This food chain said in their full-page ads that meat prices from their suppliers had skyrocketed. Well, we have people at the Department of Agriculture who watch wholesale prices all the time. The truth is that wholesale prices for Iowa beef carcasses are 1 percent less than last August 13 before the wage-price freeze went into effect. Those full page advertisements were signed by the consumer adviser to the president of the food chain. I recommend that she get out of her office and go out into the cooler and talk to the meat buyer," Secretary Butz said.

"In the last day or two, one Eastern Congressman has urged a nation-wide boycott of meat. He said this would force supermarkets to buy less meat from wholesalers, they'd buy less from packers, and packers would buy fewer cattle from farmers. 'Sooner or later, those cows will have to come to market at a lesser price,' the Congressman is quoted as saying.

"I'd like to invite the Congressman to come out into the country with me, and I'll show him that those are fed steers and fed heifers in the feedlots—not cows," Secretary Butz said.

"This is an example of the kind of muddled thinking you get when someone who doesn't know a cow from a fed steer is advising people on their eating habits and is placing the blame for food prices on farmers. Farmers are working for one-fourth less than the rest of the economy—farmers' average disposable income is only three-fourths of the average for non-farm people," Secretary Butz said.

"What the Congressman should be telling people is that between 1951 and 1971, farmer's prices for food products went up a magnificent total of 6 percent—meantime, the nation's wage rates increased an average of more than 6 percent a year for all 20 years, for a total increase of 130 percent.

"That's one reason why, despite rising food costs in stores, food is such a good buy for wage earners. They will spend $15.60 per $100 of after-tax income for food this year—that's for food eaten at home and away from home. Twenty years ago, wage earners spent $23 per $100 of after-tax income for food. If food still cost wage earners the same proportion of their incomes as 20 years ago, they'd spend $286 more per person for food this year," Secretary Butz said.

THE FLANIGAN FACTOR CONTINUED

Mr. EAGLETON. Mr. President, Peter M. Flanigan is President Nixon's "Mr. Fixit" for big business, as Time magazine has dubbed him.

Because his hand can be seen in a number of most interesting Government cave-ins to the wishes of corporate business—such as the Anaconda Copper-EPA case, the Armco Steel-Houston ship channel case, the ITT case and others—I have suggested that Mr. Flanigan be called to testify on his role in these cases before the appropriate committees of Congress.

It has been strongly indicated that if Mr. Flanigan were asked to testify before Congress, the White House would invoke executive privilege to prevent his appearance.

Mr. Flanigan apparently will not talk to the U.S Senate. But there are some persons he can talk to, apparently. According to the New York Times yesterday morning, he talked to about 30 wealthy men at a private dinner in New York sponsored by Dreyfus-Marine Midland, Inc.—which, the Times reported, manages about $10 million in ITT pension funds.

"Mr. Flanigan freely answered questions," the Times story said. Mr. Flanigan discussed a merger of two steel companies, the Times reported a participant at the dinner said.

If Mr. Flanigan can speak at a gathering of fat cats about steel mergers, why cannot he tell Congress—the elected representatives of the people of this Nation—about steel mergers, and about ITT mergers, and about a lot of other things that should be taken out of the back room—or the board room—and put on the public record.

I think he can—and should be required to.

Mr. President, I ask unanimous consent that the article from the New York Times' financial section of March 28, 1972, be printed in the RECORD.

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

FLANIGAN OFFERS ANTITRUST VIEWS

(By Michael C. Jensen)

Peter M. Flanigan, the Presidential assistant who played a controversial role in the settlement of an antitrust case involving the International Telephone and Telegraph Corporation, discussed the Administration's antitrust posture last week at a private, off-the-record dinner meeting in New York of money managers and corporate and foundation executives.

The dinner was sponsored by Dreyfus-Marine Midland Inc. (which manages about $10-million in I.T.T. pension funds) and was held in the concern's private dining room.

Mr. Flanigan freely answered questions at the dinner last Tuesday, although his appearance before a Senate committee is in doubt because of Administration resistance. The Judiciary Committee is investigating a possible link between I.T.T.'s contribution to the Republican National Convention and the antitrust settlement.

COMPETITIVE ABILITY

Although the Presidential assistant declined to discuss the I.T.T. case, he reportedly observed that, in setting United States antitrust policy, the ability of domestic concerns to compete abroad must be kept in mind.

One person who attended the dinner said Mr. Flanigan indicated that the Nixon Administration approved a merger of the National Steel Corporation and the Granite City Steel Corporation partly to make the steel companies more competitive with foreign concerns.

Mr. Flanigan denied yesterday in a telephone interview that he had specifically discussed Administration approval of the National-Granite City merger. Rather, he said, he talked more generally about its meeting the criteria for improving international competition.

UNCLEAR ON SPONSOR

Mr. Flanigan said he was unaware that the dinner was sponsored by Dreyfus-Marine Midland and thought when he was invited that it was being held by the Dreyfus Fund, an affiliated entity.

"The reason why I accepted was that it was an opportunity to talk to financial leaders on international trade," he said.

Persons who attended the dinner meeting—the guests totaled about 30—said Mr. Flanigan spoke for 45 minutes and answered questions covering a wide range of subjects.

He reportedly denied any knowledge of the financial arrangements for the Republican convention in San Diego.

The major thrust of Mr. Flanigan's talk, one source said, was international trade.

He explained to the group at the outset why he would not discuss the I.T.T. case. Although he had not yet been invited to appear before the Senate Judiciary Committee, he said, the President might invoke executive privilege to prevent his appearance if he were invited. For that reason, Mr. Flanigan continued, he did not want to discuss before a private group what he might decline to discuss before a Senate committee.

Mr. Flanigan's involvement with the I.T.T. case came when he arranged for a New York financial analyst, Richard J. Ramsden, to make an "independent" analysis of the corporation's "hardship" plea regarding its antitrust suit.

U.S. PRISONERS OF WAR AND MISSING IN ACTION

Mr. CURTIS. Mr. President, this week is set aside for us to turn our attention to the prisoners of war and the men missing in action. It is very appropriate that we do this. The war in Vietnam has gone on for so many years that it is hard for us to comprehend the suffering and the anguish of the men who are held prisoner and those who are missing in action who are still alive. It is difficult for us to understand and appreciate the suffering, the heartache, and the sorrow of the families of these men.

Some of these prisoners of war and men missing in action are the fathers of children who are old enough to be in school and yet these men have never seen those children.

I wish that we could perform some

magic and all the prisoners of war would be back home instantly and all the men who are missing in action could be accounted for, and that they would be alive and well. That is not within our power but I do believe there are some things we must do.

In the first place we must never forget those men. We must never get so involved in our own pleasures, worries, and problems that we fail to remember that those men are enduring what they are called upon to endure because they took up arms for the rest of us. We must not forget about those men just because a number of years go by.

Another thing we must do is to let the world know and particularly our enemies know that we are going to insist that these men be returned, and safely returned, that we are going to insist, regardless of how much time it takes, that those who have violated international treaties in regard to prisoners of war will be punished.

Mr. President, we need to reassure those men and their loved ones that the United States has not abandoned its time-honored principle that whenever it sends its sons into war we have an obligation to afford them all the protection that can possibly be given to them, to see that their lives are saved, and that they are brought back home.

This country can ill afford to abandon its prisoners of war. Aside from the personal injustice that comes to those men and their families, it would be a total mistake for our country. It would represent a loss of character; it would represent a loss in the value that we place upon human life and the value we place upon our fellow man.

Mr. President, I wish I could make some concrete suggestions. I do think it is necessary that we go on exploring every possible avenue to get these prisoners of war back and to force the enemy to account for those missing in action.

I believe that under the leadership of our President everything has been done that could be done. I want to express my gratitude to him for the staunch position he has taken throughout. We must carry on and I hope that the American people will unite in their plans for the return of these men, our prisoners of war, and men missing in action.

TRIBUTE TO SENATORS ON LEGISLATIVE ACHIEVEMENTS

Mr. MANSFIELD. Mr. President, the legislative achievements of the past few days have enabled the Senate to approach an abbreviated Easter recess with a calendar as clear and clean as possible considering this particular stage of the Congress.

A good many Senators are responsible for making possible the efficient manner in which the Senate has been able to address itself to the workload. Indeed, it has been the cooperation of every Member that has enabled such a result. It is, nevertheless, in order to commend the efforts of a few Senators for their strong and able leadership on particular legislative issues during the past few days.

On the question of equal rights for men and women, for example, it was the distinguished Senator from Indiana (Mr. BAYH) who devoted his strong and able advocacy to the task of steering this vital proposal through to successful Senate action. In the process of constitutional reform, it was a vital task—one that deserves the highest commendation of the Senate. Senator BAYH has perisisted in behalf of this important reform for many years. It was that persistence joined by the highest degree of skill and ability that made possible the great success of the equal rights resolution. It adds another outstanding achievement to the record of a Senator who is unsurpassed in his devotion and dedication to necessary constitutional reform.

The same tribute must be accorded the distinguished Senator from Kentucky (Mr. COOK) for his part in assisting the matter of achieving equal rights. His support and assistance were indispensable to this success.

Many other Senators played a part in assuring adoption of the equal rights resolution. But once again must be singled out for praise the contribution of the distinguished Senator from North Carolina (Mr. ERVIN). His opposition was forthright, sincere, and urged with enormous skill. Having participated so directly in so many issues this session, Senator ERVIN has truly made his mark; not only as a skillful and talented advocate, but as a man of enormous energy and endurance. He is to be commended.

Following closely behind the successful consideration of the equal rights amendment last week was the equally successful disposition accorded the equal time waiver. The suspension of section 315 of the Communications Act is an essential ingredient to an equitable presidential election. The distinguished senior Senator from Rhode Island (Mr. PASTORE) deserves the highest commendation for steering this proposal through with dispatch and with full consideration for the views of every Senator. It was only in keeping with the manner he handles all legislative matters to which he devotes his great talents. On the so-called equal time measure, the distinguished senior Senator from Tennessee (Mr. BAKER) is to be commended as well. He sought to amend the proposal, and his views, as always, were urged with strong and sincere advocacy.

There were other measures disposed of prior to today. All were handled efficiently and with splendid cooperation on the part of all members. Not all have been successful. The measure designed to assist the production cost of eggs falls into this category along with the Senate's action yesterday in not agreeing to the cargo preference recommended for the commercial air carriers. It should be said that regardless of the final outcome on these proposals, they were still managed with the greatest efficiency. In this regard, the distinguished senior Senator from Georgia (Mr. TALMADGE) has consistently discharged his responsibilities as chairman of the Committee on Agriculture with the utmost ability. No greater degree of competence or dedication has been brought to the Nation's agricultural community than that brought by HERMAN TALMADGE. His expertise in this area is unsurpassed in this body.

By the same token, the distinguished Senator from Nevada (Mr. CANNON) is unexceeded in his knowledge of the needs of the air transportation industry. His views are always thoughtful and most welcome.

That brings us to today, Mr. President. The items mentioned tell only a part of the story. During the past few weeks, there have been a number of major items disposed of by the Senate—all of which indicates that the Senate is doing its job and that all Members may join in a share of the credit. When we adjourn tomorrow for the brief Easter recess, we do so knowing that so for this session the calendar of business has been addressed with the greatest degree of expedition and efficiency. The leadership is extremely grateful.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order, 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, S. 2956.

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

ORDER FOR RECOGNITION OF SENATOR STENNIS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, at the time S. 2956, the unfinished business, is laid before the Senate, the Chair recognize the distinguished junior Senator from Mississippi (Mr. STENNIS).

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10 a.m. After the two leaders have been recognized under the standing order, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited

to 3 minutes, at the conclusion of which the Chair will lay before the Senate the unfinished business—which is S. 2956, a bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.

Upon the laying before the Senate of the unfinished business, the Chair will recognize the distinguished junior Senator from Mississippi (Mr. STENNIS).

In all likelihood, there will be no rollcall votes tomorrow. I can foresee none at this time. Debate will continue on the war powers bill throughout the day.

When the Senate adjourns tomorrow for the Easter holiday, the unfinished business will still be before the Senate. That business will be before the Senate when it reconvenes on Tuesday, April 4, 1972, following the Easter adjournment.

ADJOURNMENT TO 10 A.M.

Mr. ROBERT C. BYRD. 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 10 a.m. tomorrow.

The motion was agreed to; and at 4:05 p.m. the Senate adjourned until tomorrow, March 30, 1972, at 10 a.m.

SENATE—*Thursday, March 30, 1972*

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

PRAYER

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

Our Father-God, as in sacred memory once more we make the pilgrimage to the cross, teach us anew that without the shedding of blood there is no remission of sin and except life be outpoured there is no upward lift for the human race.

May we behold Thy life given for us and by penitence and faith appropriate the forgiveness Thou dost offer and the grace Thou dost impart.

Bring us to the Resurrection morning with new life for new days, with power for daily striving and faith in life eternal.

Through Him who brought salvation and new life. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 30, 1972.

To the Senate:

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

ALLEN J. ELLENDER,
President pro tempore.

Mr. ROBERT C. BYRD 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 Wednesday, March 29, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

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.

U.S. AIR FORCE

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

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.

U.S. NAVY

The second assistant 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.

U.S. MARINE CORPS

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

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 second assistant legislative clerk proceeded to read sundry nominations in the Air Force, in the Army, and in the Navy, 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.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 691, 693, and 694.

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

AMENDMENT OF THE MERCHANT MARINE ACT

The Senate proceeded to consider the bill (S. 2684) to amend section 509 of the Merchant Marine Act, 1936, as amended which had been reported from the Committee on Commerce with an amendment, in line 4, after the word "the", strike out "third" and insert "fourth"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 509 of the Merchant Marine Act, 1936, is amended by inserting in the fourth sentence thereof after the words, "oceangoing barge of more than two thousand five hundred gross tons" a comma and the words, "or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots".

The amendment was agreed to.

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

BRANTLEY PROJECT, PECOS RIVER BASIN, N. MEX.

The Senate proceeded to consider the bill (S. 50) to authorize the Secretary of the Interior to construct, operate, and maintain the Brantley project, Pecos River Basin, N. Mex., and for other purposes, which had been reported from the Committee on Interior and Insular