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

Affairs with an amendment, on page 2, line 4, strike out "Dams." and insert "Dams: *Provided*, That the Secretary of the Interior shall operate the existing Alamogordo Dam and Reservoir unit."; 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,

SECTION 1. The Secretary of the Interior is authorized to construct, operate, and maintain the Brantley project, Pecos River Basin, New Mexico, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and the provisions of this Act and the plan set out in the report of the Secretary on this project, with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purposes of irrigation, flood control, fish and wildlife and recreation, and for the elimination of the hazards of failure of McMillan and Avalon Dams: *Provided*, That the Secretary of the Interior shall operate the existing Alamogordo Dam and Reservoir unit.

SEC. 2. The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Brantley project shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 3. Nothing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Pecos River Compact, 1948, consented to by the Congress in the Act of June 9, 1949 (63 Stat. 159).

SEC. 4. The costs allocated to flood control and the safety of dams purposes of the project shall be nonreimbursable and nonreturnable. The repayment of costs allocated to recreation and fish and wildlife enhancement shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 5. The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Brantley project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction on the project is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue.

SEC. 6. There is hereby authorized to be appropriated for construction of the Brantley project the sum of $34,785,000 (based upon January 1969 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction involved and, in addition thereto, sums as may be required for operation and maintenance of the project.

The amendment was agreed to.

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

NAVIGABLE WATERS SAFETY AND ENVIRONMENTAL QUALITY ACT OF 1972

The Senate proceeded to consider the bill (H.R. 8140) to promate the safety of ports, harbors, waterfront areas, and navigable waters of the United States, which had been reported from the Committee on Commerce with amendments, on page 1, line 3, after the word "the", strike out "Ports and Waterways Safety Act of 1971" and insert "Navigable Waters Safety and Environmental Quality Act of 1972"; after line 5, insert a new title, as follows:

TITLE I—VESSELS CARRYING CERTAIN CARGOES IN BULK

SEC. 101. Section 391a of title 46, United States Code, is hereby amended to read as follows:

"(1) STATEMENT OF POLICY.—The Congress hereby finds and declares—

"That the carriage by vessels of certain cargoes in bulk creates substantial hazards to life, property, the navigable waters of the United States (including the quality thereof) and the resources contained therein and of the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems and recreational and scenic values, which waters and resources are hereafter in this section referred to as the 'marine environment'.

"That existing standards for the design, construction, alteration, repair, maintenance, and operation of such vessels must be improved for the adequate protection of the marine environment.

"That it is necesary that there be established for all such vessels documental under the laws of the United States or entering the navigable waters of the United States comprehensive minimum standards of design, construction, alteration, repair, maintenance, and operation to prevent or mitgiate the hazards to life, property, and the marine environment.

"(2) VESSELS INCLUDED.—All vessels, regardless of tonnage, size, or manner of propulson, and whether self-propelled or not, and whether carrying freight or passengers for hire or not, which are documented under the laws of the United States or enter the navigable waters of the United States, except public vessels other than those engaged in commercial service, that shall have on board cargo in bulk which is—

"(A) liquid and inflammable or combustible, or

"(B) oil, of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, or

"(C) designated as a hazardous substance under section 12(a) of the Federal Water Pollution Control Act (33 U.S.C. 1162);

shall be considered steam vessels for the purposes of title 52 of the Revised Statutes and shall be subject to the provisions thereof: *Provided*, That this section shall not apply to vessels having on board the substances set forth in (A), (B), or (C) above only for use as fuel or stores or to vessels carrying such cargo only in drums, barrels, or other packages: And provided further, That nothing contained herein shall be deemed to amend or modify the provisions of section 4 of Public Law 30-397 with respect to certain vessels of not more than five hundred gross tons: And provided further, That this section shall not apply to vessels of not more than five hundred gross tons documented in the service of oil exploitation which shall have on board such substances primarily for use as fuel but a portion of which may from time to time be discharged from their fuel tanks at offshore drilling or production facilities.

"(3) RULES AND REGULATIONS.—In order to secure effective provision (A) for vessel safety, and (B) for protection of the marine environment, the Secretary of the department in which the Coast Guard is operating (hereafter 'the Secretary') shall establish for the vessels to which this section applies such additional rules and regulations as may be necessary with respect to the design and construction, alteration, repair, and maintenance of such vessels, including, but not limited to, the superstructures, hulls, places for stowing and carrying such cargo, fittings, equipment, appliances, propulsive machinery, auxiliary machinery, and boilers thereof; and with respect to all materials used in such construction, alteration, or repair; and with respect to the handling and stowage of such cargo, the manner of such handling or stowage, and the machinery and appliances used in such handling and stowage; and with respect to equipment and appliances for life saving, fire protection, and the prevention and mitigation of damage to the marine environment; and with respect to the operation of such vessels; and with respect to the requirements of the manning of such vessels and the duties and qualifications of the officers and crews thereof; and with respect to the inspection of all the foregoing. In establishing such rules and regulations the Secretary may, after hearing as provided in subsection (4), adopt rules of the American Bureau of Shipping or similar American classification society for classed vessels insofar as such rules pertain to the efficiency of hulls and the reliability of machinery of vessels to which this section applies. In establishing such rules and regulations, the Secretary shall give due consideration to the kinds and grades of such cargo permitted to be on board such vessel. In establishing such rules and regulations the Secretary shall, after consultation with the Secretary of Commerce and the Administrator of the Environmental Protection Agency, identify those established for protection of the marine environment and those established for vessel safety.

"(4) ADOPTION OF RULES AND REGULATIONS.—Before any rules or regulations, or any alteration, amendment, or repeal thereof, are approved by the Secretary under the provision of this section, except in an emergency, the Secretary shall (A) consult with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other appropriate departments and agencies of the Government, (B) publish proposed rules and regulations, and (C) permit interested persons an opportunity for hearing. In prescribing rules or regulations, the Secretary shall consider, among other things, (i) the need for such rules or regulations, (ii) the extent to which such rules or regulations will contribute to safety or protection of the marine environment, and (iii) the practicability of compliance therewith, including cost and technical feasibility.

"(5) RULES AND REGULATIONS FOR SAFETY; INSPECTION; PERMITS; FOREIGN VESSELS.—No vessel subject to the provisions of this section shall, after the effective date of the rules and regulations for vessel safety established hereunder, have on board such cargo, until a certificate of inspection has been issued to such vessel in accordance with the provisions of title 52 of the Revised Statutes and until a permit has been endorsed on such certificate of inspection by the Secretary, indicating that such vessel is in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder, and showing the kinds and grades of such cargo that such vessel may have on board or transport. Such permit shall not be endorsed by the Secretary on such certificate of inspection until such vessel has been inspected by the Secretary and found to be in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder. For the purpose of such inspection approved plans and certificates of class of the American Bureau of Shipping or other recognized classification society for classed vessels may be accepted as evidence

of the structural efficiency of the hull and the reliability of the machinery of such classed vessels except as far as existing law places definite responsibility on the Coast Guard. A certificate issued under the provisions of this section shall be valid for a period of time not to exceed the duration of the certifiate of inspection on which such permit is endorsed, and shall be subject to revocation by the Secretary whenever he shall find that the vessel concerned does not comply with the conditions upon which such permit was issued: *Provided*, That rules and regulations for vessel safety established hereunder and the provisions of this subsection shall not apply to vessels of a foreign nation having on board a valid certificate of inspection recognized under law or treaty by the United States: *And provided further*, That no permit shall be issued under the provisions of this section authorizing the presence on board any vessel of any of the materials expressly prohibited from being thereon by subsection (3) of section 170 of this title.

"(6) RULES AND REGULATIONS FOR PROTECTION OF THE MARINE ENVIRONMENT; INSPECTION; CERTIFICATION.—No vessel subject to the provisions of this section shall, after the effective date of rules and regulations for protection of the marine environment, have on board such cargo, until a certificate of compliance, or an endorsement on the certificate of inspection for domestic vessels, has been issued by the Secretary indicating that such vessel is in compliance with such rules and regulations. Such certificate of compliance or endorsement shall not be issued by the Secretary until such vessel has been inspected by the Secretary and found to be in compliance with the rules and regulations for protection of the marine environment established hereunder. A certificate of compliance or an endorsement issued under this subsection shall be valid for a period specified therein by the Secretary and shall be subject to revocation whenever the Secretary finds that the vessel concerned does not comply with the conditions upon which such certificate or endorsement was issued.

"(7) RULES AND REGULATIONS FOR PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSEL DESIGN AND CONSTRUCTION, ALTERATION, AND REPAIR; INTERNATIONAL AGREEMENT.—(A) The Secretary shall begin publication as soon as practicable of proposed rules and regulations setting forth minimum standards of design, construction, alteration, and repair of the vessels to which this section applies for the purpose of protecting the marine environment. Such rules and regulations shall, to the extent possible, include but not be limited to standards to improve vessel maneuvering and stopping ability and otherwise reduce the possibility of collision, grounding, or other accident, to reduce cargo loss following collision, grounding, or other accident, and to reduce damage to the marine environment by normal vessel operations such as ballasting and deballasting, cargo handling, and other activities.

"(B) The Secretary shall cause proposed rules and regulations published by him pursuant to subsection (7) (A) to be transmitted to appropriate international forums for consideration as international standards.

"(C) Rules and regulations published pursuant to subsection (7) (A) shall be effective not earlier than January 1, 1974, unless the Secretary shall earlier establish rules and regulations consonant with international treaty, convention, or agreement, which generally address the regulation of similar topics for the protection of the marine environment. In the absence of the promulgation of such rules and regulations consonant with international treaty, convention, or agreement, the Secretary shall establish an effective date not later than January 1, 1975, for rules and regulations previously published pursuant to this subsection (7).

"(D) Any rule or regulation for protection of the marine environment promulgated pursuant to this subsection (7) shall be equally applicable to foreign vessels and United States flag vessels operating in the foreign trade. If a treaty, convention, or agreement provides for reciprocity of recognition of certificates or other documents to be issued to vessels by countries party thereto, which evidence compliance with rules and regulations issued pursuant to such treaty, convention, or agreement, the Secretary, in his discretion, may accept such certificates or documents as evidence of compliance with such rules and regulations in lieu of the certificate of compliance otherwise required by subsection (6) of this section.

"(8) SHIPPING DOCUMENTS.—Vessels subject to the provisions of this section shall have on board such shipping documents as may be prescribed by the Secretary indicating the kinds, grades, and approximate quantities of such cargo on board such vessel, the shippers and consignees thereof, and the location of the shipping and destination points.

"(9) OFFICERS; TANKERMEN; CERTIFICATION.—(A) In all cases where the certificate of inspection does not require at least two licensed officers, the Secretary shall enter in the permit issued to any vessel under the provisions of this section the number of the crew required to be certified as tankermen.

"(B) The Secretary shall issue to applicants certificates as tankermen, stating the kinds of cargo the holder of such certificate is, in the judgment of the Secretary, qualified to handle aboard vessels with safety, upon satisfactory proof and examination, in form and manner prescribed by the Secretary, that the applicant is in good physical condition, that such applicant is trained in and capable efficiently to perform the necessary operations aboard vessels having such cargo on board, and that the applicant fulfills the qualifications of tankerman as prescribed by the Secretary under the provisions of this section. Such certificates shall be subject to suspension or revocation on the same grounds and in the same manner and with like procedure as is provided in the case of suspension or revocation of licenses of officers under the provisions of section 239 of this title.

"(10) EFFECTIVE DATE OF RULES AND REGULATIONS.—Except as otherwise provided herein, the rules and regulations to be established pursuant to this section shall become effective ninety days after their promulgation unless the Secretary shall for good cause fix a different time. If the Secretary shall fix an effective date later than ninety days after such promulgation, his determination to fix such a later date shall be accompanied by an explanation of such determination which he shall publish and transmit to the Congress.

"(11) PENALTIES.—(A) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall violate the provisions of this section, or the rules and regulations established hereunder, shall be liable to a civil penalty of not more than $20,000.

"(B) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall knowingly and willfully violate the provisions of this section or the rules and regulations established hereunder, shall be subject to a fine of not less than $1,000 or more than $100,000 or imprisonment for not more than one year, or both.

"(C) Any vessel subject to the provisions of this section, which shall be in violation of this section or the rules and regulations established hereunder, shall be liable and may be proceeded against in the United States district court for any district in which the vessel may be found.

"(12) INJUNCTIVE PROCEEDINGS.—The United States district courts shall have jurisdiction for cause shown to restrain violations of this section or the rules and regulations promulgated hereunder.

"(13) DENIAL OF ENTRY.—The Secretary may, subject to recognized principles of international law, deny entry into the navigable water of the United States to any vessel not in compliance with the provisions of this section or the regulations promulgated thereunder."

"SEC. 102. Regulations previously issued under statutory provisions repealed, modified, or amended by this title shall continue in effect as though promulgated under the authority of this title until expressly abrogated, modified, or amended by the Secretary under the regulatory authority of this title. Any proceeding under section 391a of title 46, United States Code, for a violation which occurred before the effective date of this title may be initiated or continued to conclusion as though section 391a of title 46, United States Code, had not been amended hereby."

SEC. 103. The Secretary shall, for a period of ten years following the enactment of this title, make a report to the Congress at the beginning of each regular session, regarding his activities under this title. Such report shall include but not be limited to (A) a description of the rules and regulations prescribed by the Secretary (i) to improve vessel maneuvering and stopping ability and otherwise reduce the risks of collisions, groundings, and other accidents, (ii) to reduce cargo loss in the event of collisions, groundings, and other accidents, and (iii) to reduce damage to the marine environment from the normal operation of the vessels to which this title applies, (B) the progress made with respect to the adoption of international standards for the design, construction, alteration, and repair of vessels to which this title applies for protection of the marine environment, and (C) to the extent that the Secretary finds standards with respect to the design, construction, alteration, and repair of vessels for the purposes set forth in (A) (i), (ii), and (iii) above not possible, an explanation of the reasons therefor.

At the top of page 14, insert:

TITLE II—PORTS AND WATERWAYS SAFETY AND ENVIRONMENTAL QUALITY

At the beginning of line 3, change the section number from "2" to "201"; on page 15, line 24, after the word "substances", insert "(including the substances described in subsections 2 (A), (B), and (C) of section 101 of this Act)"; on page 16, line 2, after the word "to", insert "title II of"; in line 4, after the word "to", where it appears the first time, insert "title II"; at the beginning of line 14, change the section number from "3" to "202"; in line 19, after the word "in", insert "title II of"; in line 24, after the word "to", insert "title II of"; in line 25, after the word "under", insert "title II of"; on page 17, line 5, after the word "by", insert "title II of"; after line 7, insert:

(d) The authority granted to the Secretary under this title shall not be applicable to the Panama Canal and shall not be delegated by the Secretary with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation.

At the beginning of line 13, strike out "(d)" and insert "(e)"; in line 14, after the word "under", insert "title II of";

on page 18, at the beginning of line 11, change the section number from "4" to "203"; in line 13, after the word "to", where it appears the second time, insert "title II of"; in line 14, after the word "safety", insert "or environmental quality"; at the beginning of line 25, change the section number from "5" to "204"; on page 19, line 1, after the word "implement", insert "title II of"; in line 8, after the word "authorities", insert a comma and "environmental groups,"; at the beginning of line 10, change the section number from "6" to "205"; at the beginning of line 16, change the section number from "7" to "206"; at the beginning of line 17, insert "title II of"; in line 18, after the word "than", strike out "$1,000" and insert "$20,000"; in line 24, after the word "under", insert "title II of"; on page 20, at the beginning of line 3, change the section number from "8" to "207"; in line 4, after the word "under", insert "title II of"; in line 5, after the word "than", strike out "$10,000" and insert "$100,000"; and, in line 6, after the word "than", strike out "ten years and insert "one year.".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended, so as to read: "An Act to promote the safety and protect the environmental quality of ports, waterfront areas, and the navigable waters of the United States."

DEFENSE RESEARCH: THE NAMES ARE CHANGED TO PROTECT THE INNOCENT

Mr. MANSFIELD. Mr. President, a very interesting article, entitled "Defense Research: The Names Are Changed To Protect the Innocent," by Deborah Shapley, appears in the February 25, 1972, edition of Science. This article reports on a study at Stanford University with respect to the funding of research at that university by the Department of Defense and the methods used and efforts taken to obscure the nature of the research being conducted.

I think we are past the stage of subterfuge and deception in the area of research sponsored at the university by the Department of Defense. At least I hope so. There is no need for opening a new facet of credibility difficulties with the Government by the type of activity mentioned in this article.

I have written the Secretary of Defense today, asking him to put an end to this practice by requiring at a minimum that the principal investigator conducting the research at the various institutions be required at the least to acquiesce in the relevance of this research as determined by the Department of Defense as required by the so-called Mansfield amendment which is now a part of the permanent law.

Mr. President, I ask unanimous consent to have the article printed in the RECORD.

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

DEFENSE RESEARCH: THE NAMES ARE CHANGED TO PROTECT THE INNOCENT

"The influence of the military has skewed the direction of research at Stanford and it is the faculty's responsibility to restore the integrity of the process of discovering truth." So concludes a study by Stanford students of the role of the Department of Defense (DOD) in the university.

Prepared under the auspices of the Stanford Workshop on Political and Social Issues (SWOPSI), the report stirred up some predictable storms when it was released last December.* Although No official action has been taken, the report has provoked a hail of memos among faculty, SWOPSI policymakers, and the student researchers.

What the SWOPSI students had uncovered was a Janus-faced stratagem devised by DOD to protect its university research program. DOD-sponsored research has been a target of criticism at Sanford and other well-known schools for the last several years. But since the 1969 congressional attempt to reduce the dependence of university scientists on DOD, known as the Mansfield amendment, critics have assumed that the issue was dead. SWOPSI, however, found it quite alive.

Under the present system, DOD continues to fund a great deal of basic research, even projects for which military applications are at best remote; DOD can also justify all contracts through an elaborate system of accounting, which ties even the most fundamental work to a specific, military objective; and, finally DOD, as a matter of policy, discourages scientists from stating military uses for their research.

The SWOPSI report listed the 100-odd DOD research contracts at Stanford, which, it said, stood at $14 million in February 1971, or 25 percent of all contracts and grants. The students listed the scientific descriptions of the work, names of the investigators, and the financial histories for almost all the contracts. But most important, they gained access to the statements of military relevance, which DOD draws up in-house, for each research contract at Stanford. These are about a paragraph long, are stored in the Defense Documentation Center (DDC), and are rarely seen even by the scientists whose work is described. Keyed to a series of coded numbers, the statements link the research to specific technical and strategic military needs. The SWOPSI team showed the DDC statements to the Stanford principal investigators, invited their comments, and printed the whole package.

The result is interesting reading. The DDC statements justify the research in one way, and the principal investigators often tell a totally different tale. The military departments stake out whole fields of scientific endeavor as necessary to avert war or minimize its consequences. On the other hand, the professors point out to the SWOPSI students that their work will control pollution, improve traffic on local freeways, and increase love for others. Other frequent justifications are the intellectual challenge of the work and the training of graduate students. One professor even says, "I do not flatter myself that any of my work has ever specifically been applied to anything. . . ."

A contract with R. Pantell in electrical engineering with Office of Naval Research "High-power broadly tunable laser action in the ultraviolet spectrum." (The DDC title is different: "Weaponry—lasers for increased damage effectiveness.") It is described in the DDC statement thus:

"Damage mechanisms allowed by laser weapons is under intense investigation. However, it is known that within a range of frequencies the amount of damage for a given power increases with frequency. The highest frequency, shortest wavelength, is thus desirable. . . ."

However, Pantell stated that the ultraviolet lasers are "sorely needed in the areas of medicine, long distance communication, and high energy physics research. . . . Ultraviolet lasers offer the surgeon the capability to destroy, with great efficiency and pinpoint accuracy, selected areas of diseased tissue in a patient's body. . . . Another anticipated use of these lasers is in long distance (e.g., interplanetary) communication. . . ."

Many of the professors express complete agreement with the DDC statements of their project's applications, and some decline comment. Some praise their sponsors, and one, A. London, in mechanical engineering, comments simply, "What is good for technology is good for the Navy."

However, William E. Spicer, in electrical engineering, reacted violently to the DDC description of his work on amorphous semiconductors, which related them to "improved photocathodes" in "night viewing devices," with the following comment:

"The DDC statement . . . is a misstatement of the facts As can clearly be seen from the proposal . . . absolutely no connection can be made between the studies being done here and 'The ability of their materials to effect the emission of electrons through radiation which is a crucial function of the materials used as photocathodes in night viewing devices.' Whoever wrote this statement was as ignorant of the work involved as he is of the use of the English language."

(Since the report's appearance, Spicer has reconsidered his position. He now maintains, in an addendum to the report, that the DDC statement was "garbled by the computer" and that it is only "very doubtful that our work will contribute to night vision.")

Another approach was taken by some professors who declined to make any connection between their work and the DDC statements of military relevance. George Herrmann has an Air Force grant titled "Dynamic behavior and stability of solids and structures." The DDC statement links the work, among other things, to "weapon delivery and reconnaissance. . . . Also knowledge of landing fields and silo interaction with missiles are of vital importance. . . ." However, Herrmann also remarks, among other comments, that

"As far as I know the justification of the funding agency shift from year to year and are related to various missions. . . . My work is so fundamental and general that it is quite far removed from any type of immediate application, whether military or nonmilitary. . . ."

Another professor, R. N. Bracewell, who performs radio astronomy work funded by the Air Force, says, among his general comments on the merits of advancing astronomy, the following:

"In my opinion, the Air Force does not know what applications my work may have. This opinion is based on conversations with contract monitors, on contracts written before the Mansfield Amendment, and on the performance of civilian panels advisory to military agencies supporting research in astronomy. . . .

"The funding agencies justify particular research projects in different ways according to the background of the inquirer, who

*The report is titled "DOD Sponsored Research at Stanford" and comes in two volumes, Available from SWOPSI, Room 590A, Old Union, Stanford, Calif. 94305 ($8). SWOPSI is an umbrella program which permits students to study a wide variety of topics.

may be a layman, a taxpayer, a scientific advisor, an Air Force general, a budget officer, and so on. . . .

The students also found discrepancies in the titles. One contract, carried out by P. G. Zimbardo in psychology, is "Individual and group variables influencing emotional arousal, violence, and behavior." But the DDC title suggested its military relevance: "Personnel technology factors influencing disruptive behavior among military trainees."

The report explains that the discrepancies are due to the Mansfield amendment, passed in 1969. Today, the amendment is worded differently and no longer in force as such. However, for a year, it did bar DOD from funding research that did not have a "direct and apparent relationship to a specific military function or operation." It forced DOD, early in 1970, to make a review of its sponsored research and terminate about $8 million in projects judged to be irrelevant. (This cut was small compared to the $64 million slash that Congress made in the DOD research budget that year.)

But the SWOPSI report found that "the Mansfield amendment . . . did not significantly affect the nature of the work being done at Stanford under DOD sponsorship." The report listed some projects that even the principal investigators said were more useful in the civilian than in the military sphere. For xample, S. J. Kline, describing to SWOPSI uses for the Air Force of his work "Basic structure and stability of turbulent shear flows," estimates the ratio of nonmilitary to military applications to be ten to one or greater."

The report also listed one study of Chinese politics and regionalization in a future, post-Mao period whose primary relevance to DOD's mission might be questioned. An Air Force study, which will not be funded after this year, was a computer analysis of language uses in British Parliamentary speeches and in German Reichstag speeches in the priod before World War I, to test "a lateral pressure model for the path to war." The study has been ongoing since the early 1960's. However, the principal investigator, R. North, commented to SWOPSI of his work, "Most government people either could not or would not understand it."

Finally, the students uncovered an administrative decision, made in the wake of the Mansfield amendment, by which the scientists were relieved of giving their projects military-sounding titles, or writing about potential military applications. The report quotes Secretary of Defense Melvin R. Laird in congressional testimony as having said in March of 1970:

"I am going to recommend that we don't make the university scientists certify that any DOD-supported university research has a defense related outcome. . . . In their project report, in their request for a grant, I considered seriously requiring them to do that . . . [but] I hope we can avoid making it necessary for project applicants . . . to include a statement."

Why is DOD reluctant to require scientists to come forward and state military uses of their work? Laird explained that it might cause DOD to lose top scientific talent and research. In an interview, Edward Reilley, assistant director of Defense Research and Engineering, said it would "advertise" DOD's weaknesses, "we don't believe it's possible for any faculty member to be versed in DOD's needs." As for faculty who seek support from DOD telling their campus constituency that their work has no military uses, Reilley saw no need to "punish" those "few" by requiring a statement. Whether a "few" of the faculty at Stanford need their knuckles rapped, however, is a relatively minor matter. The main point is that DOD now exempts all scientists from grappling with the key moral issue of the uses to which their research results will be put.—DEBORAH SHAPLEY.

DAVID CULTIVATES THE GRASSROOTS

President Nixon's science adviser, Edward E. David, Jr., has been barnstorming the country off and on in recent weeks, conducting a round of briefings for scientists and engineers on federal science policy. The unpublicized colloquies, which have ranged from Washington to Boston to the West Coast, have given David a chance to deliver pep talks on the Administration's R & D budget to a wider cross section of the scientific community than ever before. And a free exchange of views during the briefings is said to have helped him "crystallize his understanding of the community's concerns."

John Lannan, a special assistant to David, said the main objective of the briefings is to sound out the views of scientists and engineers in preparation for the President's upcoming message to Congress on R & D. Lannan said the meetings about a dozen of which have taken place so far, have been "extraordinarily helpful" in illuminating gaps in Administration policies.

Guest lists for the briefings have included leading lights from the major scientific societies, industrial laboratories, and colleges and universities. One group also included about 30 of the 51 state and territorial science advisers. The free-wheeling discussions have ranged from the problems of jobless scientists and retrenchment in industrial research to the difficulties of expanding the role of universities in civilian technology.

"There's nothing very complicated about these meetings," one White House aide said. "David is reaching out to his 'constituency.' They're getting essentially the same briefing with the same charts, that the press got before the '73 budget was released."

Despite an obvious theatrical format, White House sources say that the meetings have enabled the Office of Science and Technology, which David heads, to reach beyond the established science advisory groups and to "make contact with a younger set of guys who haven't had much exposure to the Washington scene. They seem impressed that David is coming to them."

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 the amendments of the Senate to the amendment of the House to the bill (S. 2601) to provide for increases in appropriation ceilings and boundary changes in certain units of the national park system, and for other purposes.

The message also announced that the House had agreed to the amendment of the Senate to the concurrent resolution (H. Con. Res. 571) providing for an adjournment of the House from March 29, 1972, until April 10, 1972.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (H.R. 8787) to provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives.

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

ORDER OF BUSINESS

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

Mr. GRIFFIN. No, Mr. President.

TRANSACTION OF ROUTINE MORNING BUSINESS

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

(The remarks that Mr. COOK made at this point on the introduction of S. 3443 and S. 3444 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

QUORUM CALL

Mr. JAVITS. 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. 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.

ORDER OF BUSINESS

Mr. JAVITS. Mr. President, are we still in morning business?

The ACTING PRESIDENT pro tempore. The Senate is still engaged in the transaction of routine morning business.

TOWARD UNIFICATION OF IRELAND

Mr. JAVITS. Mr. President the tragedy in Northern Ireland and its latest development, the decision of Prime Minister Heath to suspend the ruling authority of the Ulster Parliament and to take over direct control of Northern Ireland—deeply concerns all of us in the United States because of the widespread human suffering which has taken place, the ties of millions of Americans to Ireland and our own love for freedom which owes so much to the Irish heritage.

Let us now hope that Prime Minister Heath's action will be a major step toward ending the chaos and violence which has shattered the lives of so many innocent men and women in Northern Ireland.

Let us hope that the Prime Minister has initiated an effort which will lead to a rapid decrease in the level of violence, and—in the long run—to a permanent resolution of the half-century old division between the Irish Republic and the six counties of Northern Ireland.

I recall that I introduced as a Member of the House of Representatives in the

early 1950's, I believe, the first resolution urging a plebiscite throughout Northern Ireland and the Irish Republic, on the question of unification.

It is now the responsibility of both the Catholics and Protestants—and the IRA—to refrain from violence and to cooperate to restore civil order and the rule of law. That is the fastest way to bring about withdrawal of the British Army presence.

So long as violent extremists—Catholic or Protestant—remain active behind the walls of the ancient city of Derry, on the Falls Road in Belfast, in Armagh, Lurgan, and Dunganon, there is no hope for the land and its people.

It is also the direct responsibility of the British Government to phase out rapidly the policy of arrest without warrant and internment without trial so abhorrent to the civil liberties of the Catholic minority and so totally inconsistent with the principles of Anglo-Saxon common law and international justice.

In the end, the Irish people themselves must settle their own national questions—without outside interference.

But as unification as a solution to the Irish question is considered, it must not be forgotten that there are obligations which rest with equal weight upon the Government of the Irish Republic, as well as upon the temporary government of Ulster.

The Dublin government needs to demonstrate its own willingness to answer many questions as to its own constitution and as to providing a greater degree of religious freedom and civil liberty for all of its people—Protestant as well as Catholic—as well as to eliminate censorship and institute major social reforms.

Ireland—an old but still growing nation—must ease out of a half-century of civil strife and build a stronger and more prosperous society for its own people.

Its task is to draw closer to the European continent politically and economically, to create more employment and a steady rate of national growth.

But, its task is also to be Ireland—to grow and prosper—but to preserve its deep-rooted conviction of the basic goodness of every man, in a country of pastoral serenity and magnificent beauty.

The task facing the British Government is to pave the road to reunification—and its own eventual withdrawal—as it has admirably done in the past in other areas of British influence.

Ireland has paid dearly in the last 50 years of its division, in bitter experiences, in prison sentences, in executions and bombings, in separation and, above all, in the humiliation and loss of dignity of its people.

Mr. President, it is my hope that the action taken by the British Government in seeking an end to the hostilities in Northern Ireland is the first step toward lasting peace and the eventual reunification of the Irish people.

WAR POWERS ACT

Mr. GRIFFIN. Mr. President, there has been some discussion about the possibility of a request whereby the committee amendment to the so-called War Powers Act bill would be adopted by unanimous consent and the bill, as so amended, would then be treated as original text for purposes of further amendment. On behalf of the Senator from Nebraska (Mr. HRUSKA) I wish to indicate that there would be objection to such a request. Since no votes are anticipated today, it does not seem that the point is of any particular significance, at least until next week. As I understand it, when the bill is laid down as the business before the Senate, adoption of the committee amendment would be the pending question.

The ACTING PRESIDENT pro tempore. The Senator is correct.

QUORUM CALL

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

The ACTING PRESIDENT pro tempore. The absence of a quorum is suggested. 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 of the quorum call be rescinded.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REQUEST FOR INCREASE IN AMOUNTS OF CERTAIN APPROPRIATION ACCOUNTS OF THE DEPARTMENT OF DEFENSE

A letter from the General Counsel of the Department of Defense, reporting, pursuant to law, on a request for increase in amounts of certain appropriation accounts of the Department of Defense (with accompanying papers); to the Committee on Armed Services.

REPORT ON ACTIVITIES RELATING TO TRANSPORTATION OF CARGO BY CERTAIN BARGES

A letter from the Secretary of the Treasury, reporting, pursuant to law, on activities of Public Law 92–163, relating to the transportation of cargo by barges specifically designed for carriage aboard a vessel (with acompanying papers); to the Committee on Commerce.

PROPOSED REMOVAL OF LIMITATION ON PAYMENTS FOR CONSULTANT SERVICES IN THE COMMUNITY RELATIONS SERVICE

A letter from the Acting Attorney General, transmitting a draft of proposed legislation to remove the limitation on payments for consultant services in the Community Relations Service (with an accompanying paper); to the Committee on the Judiciary.

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. COOK:

S. 3443. A bill to amend and extend the Juvenile Delinquency Prevention and Control Act of 1968. Referred to the Committee on the Judiciary;

S. 3444. A bill to assist the States in raising revenues by making more uniform the incidence and rate of tax imposed by States on the severance of coal. Referred to the Committee on Finance; and

S. 3445. A bill to protect the public interest in the field of professional team spectator sports; to provide for financial stability among professional sports franchises; to protect the interests of professional athletes; to improve the relationship between professional and amateur sports; and for other purposes. Referred to the Committee on Commerce.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COOK:

S. 3443. A bill to amend and extend the Juvenile Delinquency Prevention and Control Act of 1968. Referred to the Committee on the Judiciary.

Mr. COOK. Mr. President, in the past decade juvenile crime has risen to an unprecedented height in this country. The most recent statistics indicate that in the last 10 years juvenile crime in the 10- to 17-year-old age group has increased by approximately 148 percent. It is obvious therefore that the problem of juvenile delinquency is reaching crisis proportions. As I have stated on several previous occasions, the most logical way to solve a problem of this scope is to attack it at its roots. This means that we as a nation must be willing to commit more of our time, energy, and funds to the prevention of delinquency.

The Youth Development and Delinquency Prevention Administration in the Department of Health, Education, and Welfare, the only Federal agency exclusively concerned with delinquency prevention, has adopted this philosophy as a realistic approach to the dilemma of increasing juvenile delinquency in America. As a result of careful study, meetings in various parts of the country with experts in the field, and consultation with representatives of many academic disciplines relative to this problem, YDDPA has developed a national strategy for delinquency prevention.

During the past year, YDDPA has utilized this new national strategy to redirect its program toward the development of coordinated youth service systems outside of the traditional juvenile justice system. As a concept, it is quite simple: To go into an area, determine what public and private services are then available to the youth of that area, and to set up a system whereby these various groups and agencies work closely together in their efforts, cross-referencing young people in need to each other. Twenty-three such systems were funded in fiscal 1972 and are now in various stages of development. These social service systems are located in four different social settings: First, inner city-model city areas; second, greater urban areas; third, suburban areas; and fourth, rural areas. In addition to receiving funds from YDDPA, a number of the sys-

tems have received financial support from other Federal, State, and local sources, as well. In short, the development of these coordinated youth service systems is a major milestone in the field of delinquency prevention.

The Youth Development and Delinquency Prevention Administration came into existence by virtue of the Juvenile Delinquency and Control Act of 1968 which expires on June 30 of this year. Therefore, today I am introducing the Juvenile Delinquency Prevention and Control Act Amendments of 1972. This legislation amends the 1968 act by substituting the coordinated youth service system concept for the State agency concept in title I of the original act. It would also extend the 1968 act for another 3 years. There is a vital need to continue the program of delinquency prevention which the Department of Health, Education, and Welfare, through YDDPA, has developed over the last 4 years and especially in the last year. I sincerely hope that Congress will not allow the only Federal program in this most important area of delinquency prevention to lapse.

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

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

S. 3443

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 "Juvenile Delinquency Prevention and Control Act Amendments of 1972".

SEC. 2. Section 2 of the Juvenile Delinquency Prevention and Control Act of 1968 is amended to read as follows:

"FINDINGS AND PURPOSE

"SEC. 2. The Congress finds that delinquency among youths has reached a crisis situation which can be met by assisting and coordinating the efforts of public and private agencies engaged in combating the problem, and by increasing the number and improving the quality of the services available for preventing and combating juvenile delinquency. It is, therefore, the purpose of this Act to assist States and local communities in providing diagnosis, treatment, rehabilitative and preventive services to youths who are delinquent or in danger of becoming delinquent, to provide assistance in the training of personnel employed or preparing for employment in occupations involving the provision of such services, to provide support for development of improved techniques and information services in the field of juvenile delinquency, and to provide support for development of improved techniques and information services in the field of juvenile deliquency, and to provide technical assistance in such field."

SEC. 3. (a) The heading of title I of the Juvenile Delinquency Prevention and Control Act of 1968 is amended to read as follows:

"TITLE I—COORDINATED PREVENTIVE AND REHABILITATIVE SERVICES"

(b) The heading for Part A of such title is amended to read as follows:

"PART A—PLANNING AND DEVELOPING COORDINATED SERVICES"

(c) Section 101 of such title is amended to read as follows:

"DEVELOPING PREVENTIVE AND REHABILITATIVE COORDINATED SERVICES

SEC. 101. The Secretary may make grants to, or contracts with, any public or nonprofit agency, organization or institution for establishing or operating programs for the prevention and treatment of juvenile delinquency, which ensure coordinated services. Such grants or contracts may be provided for paying all or part of the cost of establishing or operating coordinated youth services, including the cost of planning such programs, of providing youth services either by contract or through other arrangements, or directly, only for those services which are not being provided in the community and for which payment is not available from other sources."

(d) The heading for section 102 of such title is amended to read as follows:

"PLANNING COORDINATED SERVICES"

(e) Section 113 of such title is amended to read as follows:

"APPLICATIONS

"SEC. 113. (a) Grants under this part may be made only upon application to the Secretary which contains or is accompanied by satisfactory assurances that—

"(1) such applicant agency will provide to the extent feasible for coordinating, on a continuing basis, its operations with the operations of public agencies and private nonprofit organizations furnishing welfare, education, health, mental health, recreation, job training, job placement, correction, and other basic services in the community for youths;

"(2) such applicant agency will make reasonable efforts to secure or provide any of such services which are necessary for diagnosing, treating, and rehabilitating youths referred to in section 111 and which are not otherwise being provided in the community, or if being provided are not adequate to meet its needs;

"(3) maximum use will be made under the program or project of other Federal, State, or local resources available for provision of such services;

"(4) public and private agencies and organizations providing the services referred to in paragraph (1) will be consulted in the formulation by the applicant of the project or program, taking into account the services and expertise of such agencies and organizations, and with a view to adapting such services to the better fulfillment of the purposes of this part;

"(5) in developing coordinated youth services, youth and public or private agencies, organizations, or institutions providing youth services within the geographic area to be served by the applicant are given the opportunity to present their views to the applicant with respect to such develoment; and

"(6) the applicant or lead agency is responsible for both accountability for and continuity of services for youth."

(f) Subsection (b) of section 113 of such title is amended (1) by deleting the word "and" after the semicolon in clause (2) thereof, (2) by deleting clause (3) thereof, and (3) by adding at the end thereof the following:

"(3) the functions and services included;

"(4) the procedures which will be established for protecting the rights, under Federal, State and local law, of the recipients of youth services, and for ensuring appropriate privacy with respect to records relating to such services, provided to any individual under coordinated youth services developed by the applicant;

"(5) the procedures which will be established for evaluation; and

"(6) the strategy for phasing out support under this Act and the continuance of a proven program through other means."

(g) Section 113 of such title is amended by adding at the end thereof the following new subsection:

"(c) No grant or contract may be made under part B unless the application therefor has first been submitted to the Chief Executive Officer of the State in which the coordinated youth services are to be established in order to provide him with an opportunity (in accordance with regulations of the Secretary) to review and comment upon such application."

SEC. 4. (a) Section 123 of title I of the Juvenile Delinquency Prevention and Control Act of 1968 is amended as follows:

(1) Subsection (a) of such section is amended by deleting "a State agency or, in the case of direct grants under section 132, to the Secretary, by a public agency or nonprofit private agency or organization," and inserting in lieu thereof "the Secretary".

(2) Subsection (b) of such section is amended by deleting the semicolon and the word "and" following such semicolon and inserting in lieu thereof a period.

(3) Such section is amended by adding at the end thereof the following new subsection:

"(c) No grant or contract may be made under part C unless the application therefor has first been submitted to the Chief Executive Officer of the State in which the coordinated youth services are to be established in order to provide him with an opportunity (in accordance with regulations of the Secretary) to review and comment upon such application."

(b) Sections 131, 132, 133 and 134 of title I of such Act are hereby repealed.

(c) The first sentence of section 135 of title I of such Act is amended by deleting "the State agency, or, in the case of grants under section 132,".

(d) Section 402 of title IV of such Act is amended to read as follows:

"SEC. 402. There are authorized to be appropriated for grants and contracts under this Act, to the Department of Health, Education, and Welfare, $75,000,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years such sums as may be necessary for carrying out this Act."

(e) The first sentence of section 408 of title IV of such Act is amended by deleting "the Secretary" and inserting in lieu thereof "the interdepartmental council".

(f) Section 410 of title IV of such Act is amended (1) by deleting paragraph (2) thereof; (2) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and (3) by adding at the end thereof of the following new paragraphs:

"(5) 'Delinquent youth' refers to any youth who has been found by a court to be delinquent, or to be in need of care or supervision.

"(6) 'Youth in danger of becoming delinquent' refers to any youth whose conduct is such as to bring him within the jurisdiction of the juvenile court.

"(7) The term 'Youth Services' means a variety of services or types of care which are necessary components of a comprehensive program for the prevention of juvenile delinquency or for the rehabilitation of delinquent youth including counseling of various types, employment, vocational training, medical and mental health, education, recreational and various types of foster care, which are now being developed or provided by a variety of State and local public and voluntary agencies.

"(8) The term 'coordinated youth services' means a comprehensive service delivery

system, separate from the system of juvenile justice (which encompasses authoritative action by agencies such as the juvenile courts, law enforcement agencies, and detention facilities) for providing youth services through a coalition of public and voluntary agencies, to an individual who is delinquent or in danger of becoming delinquent and to his family in a manner designed to promote accessibility to and effective use of such services with a minimum of duplication."

By Mr. COOK:

S. 3444. A bill to assist the States in raising revenues by making more uniform the incidence and rate of tax imposed by States on the severance of coal. Referred to the Committee on Finance.

Mr. COOK. Mr. President, I am introducing today the Federal Coal Severance Tax and Revenue Sharing Act of 1972. As the title implies, the bill would impose a Federal severance tax on the extraction of coal and would also allow the States to share in this severance tax.

More specifically, the bill imposes a severance tax on coal on property located within the United States of an amount equal to 4 percent of the gross income from the property derived by the holder of working interest during the taxable period. Because of certain exclusions in the bill it would, in effect, tax the gross value of the coal extracted from the mineral property. Furthermore, it places a minimum tax or floor on an amount equal to a rate of 30 cents per ton to the total number of tons produced and sold.

Mr. President, many coal mining companies have generally opposed State severance taxes on the grounds that if nonuniform taxes were enacted in the various States, those companies in the States which impose a severance tax higher than its neighbor would be at a competitive disadvantage. This bill, by imposing a Federal tax of 4 percent on coal, is a uniform tax which will place all companies and all coal-producing States on an equal footing.

In 1970 the total production of coal amounted to approximately 603 million tons. The gross value for the 1970 production was placed somewhere in the neighborhood of $3.8 billion. In 1971 preliminary figures indicate a production of 560 million tons of coal valued at approximately $3.5 billion. A Federal severance tax imposed upon the 1971 figure would have yielded over $140 million in new revenue. While this figure might seem relatively small in relation to the proposed Federal budget for fiscal 1973 of $246.3 billion, it should be remembered that this is a new tax and would be a substantial amount to those States which receive a Federal tax credit for the imposition of a similar State-imposed severance tax.

This brings up to the second most important feature of this bill, the Federal tax credit. Since the President proposed a revenue sharing plan over a year ago, that concept is now a term of everyday use. The bill provides that any State severance taxes on coal collected by the States will be deducted from the amount levied by the Federal Government. Thus, the bill creates an incentive for State governments to enact their own severance taxes which in turn will create new sources of income for many of our tax-starved States.

Mr. President, I think we are all only too familiar with the need of the States and localities for additional revenues to finance education and other very necessary expenditures. I believe that this legislation is urgently needed, and I strongly encourage the Senate Finance Committee to very carefully study my proposal.

By Mr. COOK:

S. 3445. A bill to protect the public interest in the field of professional team spectator sports; to provide for financial stability among professional sports franchises; to protect the interests of professional athletes; to improve the relationship between professional and amateur sports; and for other purposes. Referred to the Committee on Commerce.

FEDERAL SPORTS ACT OF 1972

Mr. COOK. Mr. President, the professional sports world is in a period of turbulence. Almost daily, sports pages throughout the country report a new controversy involving professional athletes, teams, and leagues. Within the last few months, many events have occurred which have shaken the foundation of professional sports, and have left the American sports fan clinging to fond memories of sports as it was.

Few Americans have escaped the attraction of the sports world. Its drama, heroics, and excitement involve over one-half of the American people every year. Indeed, it has been said that a sports event is a microcosm of life. Each participant begins his quest on an equal basis, each meets many obstacles along the way, and each finally experiences success or failure. The only difference is that the world of sports always provides another chance for success, another hope of victory.

I fondly remember my younger years. I gave my unswerving support and emotion to my favorite players and teams. And I succeeded or failed, lived or died, along with them. Obviously it is true that a sports event is only a transitory moment, and we are always faced with the reality of tomorrow. But sports can give us hope, something to believe in. We can see someone succeed on the athletic field and rededicate ourselves to success in our own fields.

Recent events, however, have made it nearly impossible for the American sports fan to view sports in this manner. The players and teams have become more similiar to road shows than resident companies. The emotional allegiances which have characterized the Amerian sports fan for so many years are dying. We have become a nation of technical sports observers, rather than enthusiastic, vicarious participants. Maybe this is only one symptom of a growing national psychology, But I for one am not prepared to surrender a lifetime love so easily.

The sports world has been beset by a series of easily identifiable problems, all of which have resulted from the mass commercialization of sports. Until recently we have been reluctant to admit that sports is a business, as well as a national recreation form.

Until recently, the world of sports was always different, always sacred. However, with the recent snowball of controversy in the sports world, the time has obviously arrived for a new perspective in the field of sports.

Consider for a moment the recent events that have filled our sports pages: Vida Blue, last year's most valuable player in baseball, may not play a second year due to contract disputes; the Curt Flood challenge of the so-called reserve clause has just been argued before the Supreme Court; the Baseball Players Association has threatened a player strike over benefit disputes; the NBA and ABA are involved in a destructive war over players, and may be destroying professional basketball in the process. The list is endless, and would fill this record. My point, however, is short and direct; namely, that the real victims of these disputes and controversies are the American sports fans. The very people who elevated the world of sports to its lucrative position are now being forgotten in the wake of the exploitive tactics of the sports world figures.

The Congress has considered parts of these problems in the past, and is dealing with other parts at this time. Yet the problems have only multiplied, and the situation has become more desperate. The basketball situation is the most deplorable example of the critical condition of professional sports. Professional basketball teams in both leagues are pirating players, college athletes have been lured by six and seven figure offers into deserting their educational pursuits and their college athletic programs. The Judiciary Committee is currently considering a bill which is designed to alleviate part of this problem. I am a cosponsor of that bill, as are 25 other Senators. However, problems will remain whatever the disposition of that proposal may be. Rights of players and teams must still be preserved in all professional sports. However, the first right to be protected is the right of the sports fan to a stable professional sports system; one upon which he can rely, and one which he can enjoy. We cannot lose sight of the irrefutable fact that unless we insure the continued support of the American people for athletic activities, all the disputes which we are currently experiencing will become moot and irrelevant.

For all of these reasons I am today introducing the Federal Sports Act of 1972. I sincerely believe that this proposal can guarantee a vital and stable professional spectator sports system, while protecting the rights and interests of all of the principal parties.

Briefly, this proposal would establish within the Department of Commerce a commission to be known as the Federal Sports Commission. It would be composed of three commissioners, appointed by the President, and a sports advisory

council, composed of eight members selected by the Commission from among the various interests of the sports world. The Commission's authority would be limited to the promulgation of rules and regulations to resolve certain of the problems now hindering professional sports. In particular, these areas are: television blackouts, drafting procedures, the sale and movement of franchises, and problems involving player contracts.

Support for this concept is definitely widespread. Several weeks ago, Mr. Ralph Nader expressed his opinion that Federal action is needed in the area of player contracts. Howard Cosell, whom I consider to be a far-sighted individual and an intelligent sports commentator and fan, has expressed on several occasions his opinion that a Federal overseeing body was a necessity. My good friend, Senator ERVIN, who has been so deeply involved in the consideration of the basketball merger legislation, has said that if this merger is permitted, Federal oversight would be necessary.

This proposal would provide that oversight, but it would primarily provide a voice for the American sports fan, who by now must feel that he is shooting at moving targets.

I sincerely believe this proposal to be an answer to a most critical problem, and I believe it is necessary to preserve the system of sports which has provided many years of enjoyment and excitement for millions of American people. I therefor submit herewith the Federal Sports Act of 1972.

Mr. President, I ask unanimous consent that the proposed Federal Sports Act of 1972 be printed at this point in the RECORD.

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

S. 3445

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act be cited as the "Federal Sports Act of 1972."

DECLARATION OF PURPOSE

SEC. 2. The Congress hereby declares that the public has a right to a stable, financially sound professional sports system, that unstable conditions now exist within professional sports, including the arbitrary sale and transfer of team franchises, the pirating of professional athletes by the various teams and leagues, inequitable arrangements relating to the broadcast of professional sports events on commercial television, inefficient and disruptive mechanisms for bringing amateur athletes into professional sports, and uncertain conditions concerning the forms and provisions of player contracts. It is therefore the purpose of this Act to provide for the establishment of a Federal Sports Commission within the United States Department of Commerce, which shall have the authority to promulgate and enforce rules or other regulations to carry out the purpose of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "professional sports team" means an organization of more than two professional athletes, which is a member organization of a professional sports league,

(2) the term "professional athlete" means an athlete who is remunerated under contract or otherwise by a professional sports team for his athletic performances;

(3) the term "professional sports league" means an association of professional sports teams which provides a competitive schedule for its member teams, and which provides other administrative services for the association, including but not limited to the following associations: The National Football League, the National Basketball Association, the American Basketball Association, the National Hockey League, the National Baseball League, the American Soccer League, and the American Baseball League.

FEDERAL SPORTS COMMISSION

SEC. 4. (a) A Commission is hereby created and established within the Department of Commerce to be known as the Federal Sports Commission (hereinafter referred to as the "Commission") consisting of three Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as Chairman. The Chairman shall be the principal executive officer of the Commission and, when so designated, shall act as Chairman until the expiration of his term of office. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) The Commissioners first appointed under this section shall continue in office for terms of three, four and five years, respectively, from the date of enactment of this Act, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed each for a term of five years from the date of expiration of the term for which his predecessor was appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office and except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his prececessor was appointed shall be appointed only for the unexpired term.

(c) Not more than two of the Commissioners shall be appointed from the same political party. No person in the employ of, or holding any official relation to, any professional sports team, professional sports league, player association, or owning stocks or bonds of substantial value in any team, or who is in any other manner pecuniarily interested in any team, shall enter upon the duties of or hold the office of Commissioner. Commissioners shall not engage in any other business, vocation, or employment.

(d) No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. Two members of the Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually select a Vice Chairman to act in the absence or in the case of the disability of the Chairman or in the case of a vacancy in the office of the Chairman.

(e) The Commission shall maintain a principal office and may meet and exercise any or all of its powers at any other place. The Commission may, by one or more of its members or by such agents or agency as it may designate, prosecute any inquiry necessary to its function anywhere in the United States. A Commissioner who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Commission in the same matter.

(f) The Commission shall prepare and submit to the President for transmittal to the Congress on or before October 1 of each year a comprehensive report on the administration of this Act for the preceding fiscal year. Such report shall include:

(1) a thorough appraisal, including statistical analyses, estimates, and long term projections, of the status of professional sports including, but not limited to, the financial status of teams, the condition of player-team relations, the condition of relations between professional and amateur sports organizations, and status reports on any problems which may be found to exist in the Commission's jurisdiction;

(2) an evaluation of the degree of observance of Federal sports rules and regulations, including a list of enforcement actions, court decisions, and compromises of alleged violations;

(3) a summary of outstanding problems confronting the administration of this Act, in order of priority;

(4) a list, with a brief statement of the issues, of completed or pending judicial actions under this Act;

(5) the extent of cooperation between Commission officials and representatives of the various teams, players, leagues, and other interested parties in the implementation of this Act, including a log or summary of meetings held between Commission officials and representatives of the various teams, players, leagues, and other interested parties; and

(6) an appraisal of the significance and potential effects of any legislation at the state, local or Federal level which relates to the responsibilities of the Commission

(g) That report required by subsection (f) shall contain such recommendations for additional legislation as the Commission deems necessary to remedy problems which relate to professional sports, and the relation between professional and amateur sports.

(h) The Commission shall appoint an Executive Director, a General Counsel, a Director of Information, and such other officers and employees as are necessary in the execution of its functions. Commission employees, other than those specifically enumerated in the preceding sentence, shall be subject to the provisions of Title 5, United States Code, governing appointments in the competitive service.

FEDERAL SPORTS RULES

SEC. 5. The Commission shall have authority to promulgate rules or other regulations which relate to:

(a) the procedures for imposing territorial restrictions on the broadcast of professional sports events on commercial television. (Said rules shall be promulgated only after consultation with the Federal Communications Commission.)

(b) the sale and/or transfer of professional team franchises;

(c) the mechanisms or procedures for transferring amateur athletes into professional sports;

(d) the form of player contracts (but not the terms of those contracts), in order to best assure adequate disclosure of the terms of such contracts to the contracting parties.

FEDERAL SPORTS RULES—PROCEEDINGS BY THE COMMISSION

SEC. 6. (a) Whenever the Commission finds that a rule or other regulation authorized by section 5 is necessary to protect the interests of the public, to prevent the financial failure of professional sports teams, or to protect the rights of professional athletes, the Commission shall commence a proceeding for the development of such a rule or regulation.

(b) A proceeding for the development of such a rule or regulation shall be commenced by the publication of a notice in the Federal Register. The notice shall state

(1) the rule or regulation;

(2) the reason for such rule or regulation; and

(3) the manner and the period within which all interested persons may present their comments on such rule or regulation or the need therefor.

(c) As soon as practicable after the publication of a proposal to promulgate a rule or regulation, the Commission shall, by order published in the Federal Register, act upon such proposed rule or regulation, or withdraw the applicable notice of proceeding. The order shall set forth the rule or regulation, the reasons for the Commission's action (including reasons for the promulgation of a rule or regulation materially different than those set forth in the proposal), and the date or dates upon which such rule or regulation, or portions thereof, shall become effective. Such date or dates shall be established so as to most effectively achieve the purposes of this Act.

(d) The Commission shall not promulgate a sports rule or regulation, unless it determines and includes such determination in the order promulgating such rule or regulation, that its findings show that such rule or regulation (including the effective date thereof) is reasonably necessary to carry out the purposes for which such rule or regulation is authorized by section 5, and that the promulgation of such rule or regulation is in the public interest.

DISPUTES OF FACT

(e) The Commission may conduct a hearing in accordance with such conditions or limitations as it may make applicable thereto, for the purpose of resolving any issue of fact material to any finding required to be made by the Commission under this section.

REVOCATION OR AMENDMENTS OF RULES OR REGULATIONS

SEC. 7. (a) The Commission may revoke, in whole or in part, any rule or regulation, upon the ground that there no longer exists a need therefor or that such rule or regulation is no longer in the public interest. Such revocation shall be published as a proposal in the Federal Register and shall set forth such rule or regulation or portion thereof to be revoked, a summary of the reasons for its determination that there may no longer be a need therefor or that such rule or regulation or any part thereof may no longer be in the public interest, the manner in which interested persons may examine the information relevant to the Commission's determination, and the period within which all interested persons may present their views in writing, with respect to such revocation. As soon as practical thereafter, the Commission shall by order act upon such proposal and shall publish such order in the Federal Register. The order shall include the reasons for the Commission's action, and the date or dates upon which such revocation shall become effective.

(b) The requirements of sections 5, 6, and 7 of this Act for the promulgation of a sports rule or regulation shall apply to the promulgation of a material amendment of such a rule or regulation. The Commission may promulgate an amendment of a sports rule or regulation other than a material amendment without regard to sections 5, 6, or 7, but shall comply with the procedures set forth in subsections (a) and (b) of section 6, and shall set forth, in its order promulgating such amendment, such findings as it may deem appropriate in explanation thereof. As used in this subsection, the term "material amendment" means an amendment that would substantially increase the degree of compliance required by a rule or regulation.

JUDICIAL REVIEW

SEC. 8. (a) Any person adversely affected by an order of the Commission pursuant to section 6, or pursuant to section 7, may, at any time after such order is published by the Commission, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such order. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The Commission shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Commission based its order, as provided in section 2112 of title 28 of the United States Code. Such record shall include such order to the Commission and, if issued, held, or obtained in connection therewith, the notice of proceeding published pursuant to subsection (b) of section 6, or section 7; the transcript or summary of any proceedings and the findings arising therefrom; and any other information, including comments of interested persons, required to be considered by the Commission in the promulgation of such order.

(b) Upon the filing of the petition under subsection (a) of this section, the court shall have jurisdiction to review the order of the Commission in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief, including interim relief, as provided in such chapter. The order of the Commission shall be affirmed if supported by substantial evidence on the record taken as a whole.

(c) The judgment of the Court affirming or setting aside, in whole or in part, any order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in Section 1254 of Title 28 of the United States Code.

SPORTS ADVISORY COUNCIL

SEC. 9 (a) The Commission shall establish a Sports Advisory Council which it may consult before prescribing a sports rule or regulation. The Council shall be appointed by the Commission and shall be composed of eight members, each of whom shall be qualified by training and experience in one or more of the fields within the jurisdiction of the Commission. The Council shall be constituted as follows:

(1) two members shall be officials of professional sports leagues;

(2) two members shall be representatives of professional sports team franchises;

(3) two members shall be representatives of professional athlete organizations;

(4) two members shall be selected from among amateur sports organizations, sports writers and broadcasters, and recognized leaders in the fiield of sports.

(b) The Council may propose sports rules and regulations to the Commission for its consideration and may function through subcommittees of its members. All proceedings of the Council shall be public, and a record of each proceeding shall be available for public inspection.

(c) Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding $100 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

ADDITIONAL POWERS OF THE COMMISSION

SEC. 10 (a) The Commission, or any two members thereof, as authorized by the Commission, may conduct hearings at its office or otherwise secure data and expressions of opinion pertinent to the jurisdiction of the Commission. The Commission shall publish notice of any proposed hearings in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) The Commission shall also have the power—

(1) to require, by special or general orders, professional sports teams, leagues, individuals, and other organizations to submit in writing such reports and answers to questions as the Commission may prescribe; such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in the case of disobedience to a subpena or order issued under this subsection, to invoke the aid of any district court of the United States in compliance with such subpena order;

(5) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraphs (3) and (4) of this subsection; and

(6) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(c) Any district court within the United States within the jurisdiction of which any inquiry is carried on may, upon petition by counsel for the Commission, in case of refusal to obey a subpena or order of the Commission under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) The Commission is authorized to enter into contracts with governmental entities, private organizations or individuals for the conduct of activities authorized by this Act.

(e) The Commission is authorized to establish such policies, criteria, and procedures and to prescribe such rules and regulations as it deems necessary to administration of this Act and its functions hereunder. Unless otherwise specified, the provisions of Title 5, United States Code, Section 553 shall apply to such proceeding.

COOPERATION WITH FEDERAL AGENCIES

SEC. 11. The Commission is authorized to obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this Act. Each such department or agency is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to professional sports shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

ENFORCEMENT

Civil Penalties

SEC. 12 (a) Whoever fails to comply with a rule or regulation issued pursuant to Sections 5, 6 and 7, or, in case of commission of

any such act by a team, league, or individual, the team, league, or individual, and any individual director, officer, or agent of such team, league, or individual who knowingly committed such act, shall be subject to a civil penalty of not more than $50,000 for each such act.

(b) The Commission may assess and collect any civil penalty incurred under this Act and, in its discretion, remit, mitigate, or compromise any penalty prior to referral to the Attorney General. Subject to the approval by the Attorney General, the Commission may engage in any proceeding in court for that purpose. In determining the amount of any penalty to be assessed hereunder, or the amount agreed upon in any compromise, consideration shall be given to the appropriateness of such penalty in light of the gravity of the violation and the extent to which the person charged has complied with the provisions of rules or regulations issued pursuant to Sections 5, 6, and 7, or has otherwise attempted to remedy the consequences of the said violation.

Injunctions

(c) Upon application by the Attorney General, the district courts of the United States shall have jurisdiction to enjoin the commission of acts in violation of any rule or regulation issued pursuant to Sections 5, 6, and 7, and to compel the taking of any action required by this Act.

INTERPRETATIONS AND SEPARABILITY

SEC. 13. The provisions of this Act shall be held to be in addition to and not in substitution for or limitation of the provisions of any other law. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to any other person or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 14. There are hereby authorized to be appropriated such sums as are necessary for the purpose of carrying out the provisions of this Act.

ADDITIONAL COSPONSORS OF A BILL

S. 3393

At the request of Mr. COOK, the Senator from South Carolina (Mr. HOLLINGS) and the Senator from North Dakota (Mr. BURDICK) were added as cosponsors of S. 3393, a bill to amend title XVII of the Social Security Act to provide financial assistance to individuals suffering from chronic kidney disease who are unable to pay the costs of necessary treatment.

SOCIAL SECURITY AMENDMENTS OF 1972—AMENDMENTS

AMENDMENTS NOS. 1091 THROUGH 1097

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

H.R. 1 AND ITS IMPACT ON RHODE ISLAND SENIOR CITIZENS

Mr. PELL. Mr. President, the Senate will soon be considering a bill which is important to the Nation and which is of great concern in Rhode Island.

The bill to which I refer is H.R. 1. The changes proposed in this bill for the medicare and medicaid programs will have a direct impact on more than 104,000 senior citizens in my own State of Rhode Island.

To ascertain the feelings of my fellow Rhode Islanders on this measure, I held 2 days of hearings for the Health Subcommittee of the Senate Special Committee on Aging in Rhode Island. Statements were received from 89 persons in Providence and Woonsocket, and the general consensus of my constituents' opinions were cutbacks proposed in the medicare and medicaid programs would not result in any real savings to the Nation's taxpayers, but would result only in increased economic hardship and misery for our already hard-pressed senior citizens.

Arthur F. Hanley, president of Rhode Island Blue Cross and the executive director of Rhode Island Blue Shield, in noting the impact of the H.R. 1 cutbacks on his organization's supplementary coverage for medicare beneficiaries, stated:

> Congress would be taking $1.3 million in buying power from the people of Rhode Island over age 65, many of them living on limited and fixed incomes.

Dr. Mary Mulvey, vice president of the National Council of Senior Citizens, told the Special Committee on Aging:

> The cost of medical care is one of the principal problems that our elderly people face today . . . Medicare was a great advance, but it does not cover 45 percent of our senior citizens' health costs. The financial outlay by senior citizens has been increasing year by year. The Plan A deductible rose from $40 to $60—a fifty percent increase in four years. Out-of-pocket premiums, Part B, increased from $3 a month to $5.60 a month in four years—an 87 percent increase. Older persons who can afford to buy Blue Cross Plan 65 have had their premiums increased by 65 percent.

The cutbacks proposed in H.R. 1 will not only hurt the senior citizens themselves but they will have an impact on the taxpayers of Rhode Island. According to Dr. P. Joseph Pesare, who directs the Rhode Island medicaid program:

> The time is rapidly approaching when Medicare beneficiaries will be priced out of the market in terms of ability to pay deductibles, coinsurance and the premiums.
>
> The increase in the deductible and coinsurance factors as outlined in H.R. 1 will increase Medicaid costs . . .
>
> In the case of Rhode Island, 49.74 percent of the additional expenditures must be met with State funds.

Our present system of medicare for senior citizens has unfortunately become another one of those false hopes of the 1960's that has not materialized.

Senior citizens are now paying, out of their pockets, nearly as much as they paid before medicare was enacted, and nearly one-fourth of the senior citizens in my State are too poor to pay even their own medicare costs.

Senior citizens have found that, instead of the blanket coverage that they had expected from medicare in 1965, medicare is no more than cheesecloth which has been eaten away by false Government economy efforts.

The economic and health protection promised by medicare has been restricted in nearly every conceivable way. There are large deductibles, there is coinsurance, there is the 80-percent coverage of part B benefits, and there are the strict regulations which have nearly nullified extended care benefits for senior citizens. At the time of my Providence hearing there were only 300 Rhode Islanders receiving extended care benefits from medicare.

H.R. 1 now promises to eat away even more holes in health coverage for elderly citizens.

Mr. President, following a period in which more senior citizens were becoming impoverished than were moving out of poverty, it is most distressing to me to see the Senate moving to consider a bill which may place an even greater economic burden on the shoulders of our elderly by further restricting medicare coverage.

It seems to me that now is the time for us to be moving to expand medicare coverage and to make medicare more similar to the national health insurance bills which many of us espouse.

It is for this reason that I am now introducing a number of amendments to H.R. 1 that have been suggested to me by fellow Rhode Islanders.

Mr. President, I have reviewed the 222 pages of the hearings I held in Rhode Island very carefully, and I believe the legislative changes recommended by my fellow Rhode Islanders are meritorious and deserve to be recognized by the Congress.

The thrust of the changes suggested is aimed in the same direction as the suggestions which many of us in the Senate have supported for our overall system of health care. These recommendations emphasize the need for comprehensive health benefits, low-cost health care, and greater accessibility of health care benefits in a nonhospital setting.

The amendments are designed to turn the focus of medicare away from its emphasis on health services in the sterile and costly setting of the hospital to an emphasis on health care services in the warm and friendly atmosphere of the senior citizen's own home. These amendments would achieve that goal, not by costly deductibles which only develop needless redtape and do not discourage hospital care but by making less-expensive alternatives available to the sick elderly citizen.

ELIMINATION OF DEDUCTIBLES AND PREMIUM

Included in H.R. 1 is a provision to increase the deductible for part B, physician services, from $50 to $60. The first amendment I am offering provides for the gradual elimination of that deductible before 1975, instead of an increase.

The second amendment that I am offering requires the elimination of the $60 part A—hospital care, deductible by July of 1973. However, for the sole purpose of computing the part A coinsurance rate, a formula deductible would remain.

Mr. Hanley, who administers the medicare program in Rhode Island, called for these amendments at the Providence hearing:

> We would recommend the elimination of all deductibles with the application of an "across the board" uniform coinsurance. The effect of deductibles and coinsurances, originally intended as incentives for appropriate use of facilities and services, is still unclear and controversial. There is a real danger that they may promote underutilization among the aged. If there is a need for program cost containment, it might be better in the form of coinsurance, but most certainly not a

combination of both deductibles and coinsurance.

It is my own view that deductibles serve only to confuse the elderly, to create needless redtape, and to place greater economic burdens on the shoulders of the poor elderly. Most senior citizens really do not understand the purpose of deductibles, and those that do understand usually are not deterred from seeking hospital care since they usually have no choice in the matter. It is the recommendation of their doctor which is determinative, not whether they have to pay a $60 deductible.

The third amendment I am offering to relieve the economic burden of health costs on our senior citizens is an amendment to eliminate the part B premium for voluntary coverage of physician services. This premium which has increased in 4 years by 87 percent to $5.60 a month is for voluntary coverage selected by about 96 percent of our senior citizens. I see no reason why this optional part of the medicare program should not be made an integral part of the whole program and that the financing of parts A and B be combined. This is a proposal that has been supported by the administration, and I have included it as part of my amendment to eliminate the part B premium.

Presently we have four trust funds operating under the social security program and two of them are for part A and part B of medicare. My amendment would combine those funds and provide for some limited additional funding from general revenues. These general revenue funds are necessary, I believe, from the viewpoint of equity and a fair sharing of the tax burden. Medicare benefits are funded now through a flat-rate tax appended to the social security tax paid by the working public. Since the costs of health benefits being received by our senior citizens far exceed any contributions that they might have made when they were working, the medicare trust funds cannot be seen as a part of a normally understood insurance program right now. Therefore, I believe it would be more equitable if some of the costs of the program were drawn from the graduated income tax structure, which provides us general revenues, rather than solely from the trust funds which are based on a flat-rate tax.

If we move the financing of the medicare program to the more stable foundation that I have suggested, I believe it will then be possible for us to cover more than 45 percent of the average senior citizen's health bill as the program now provides.

In my Rhode Island hearings and in my mail from Rhodes Islanders, I have been struck by the near unanimous feeling that medicare should be amended to include coverage of out-of-hospital drugs, dentures, dental care, eye care, eyeglasses, hearing aids, and chiropractic services. Today I am offering amendments to include these items in a newly structured medicare program.

COVERAGE OF DRUGS, EYEGLASSES, DENTURES, AND HEARING AIDS

The amendment I offer on drug coverage is designed to insure that only safe and effective drugs are made available to those who need them, and to check unnecessary utilization of prescriptions an initial $2 copayment and a subsequent $1 copayment are required.

While I know that there is some concern about the cost impact of prescription drug coverage, I believe my amendment provides the least costly way of providing coverage. The prescription drug coverage I recommend would cost us no more than we now spend for an aircraft carrier.

I think the need for drug coverage was well put by Mr. William Davis who attended the Providence hearing:

Prescription drugs cost, my own and wife, an average of $200 a year. They could cost more in the future.

The majority of the elderly keep alive on pills. It is not asking for too much to convince the Congress that benefits under Medicare should be broadened to include this proposal.

Arthur Hanley of Rhode Island Blue Cross and Blue Shield reaffirmed Mr. Davis's concerns:

We would advocate the inclusion of prescription drugs in the Medicare program. There has been a tendency to dismiss the importance of this area of coverage by citing the fact that acute episodic illness beyond the economic reach of Medicare recipients. Our concern is directed toward the large number of chronically ill persons over age 65 whose prescription drug costs may go as high as $500 to $1000 per year.

The need for coverage of eyeglasses, dentures, and hearing aids was supported by many people, including Mildred A. Dean, president of the Rhode Island Association of Senior Citizens and Senior Citizens Clubs and Ruth M. Person who is an aide in a senior citizens program sponsored by the Providence model cities program.

MORE AVAILABLE NONHOSPITAL CARE

With all the attention that has been given to reducing costs and coverage in the medicare program in recent years, I find it somewhat ironic that no change has been made in the one rquirement which I believe is most responsible for needless costs—that is the requirement that a patient must be in a hospital for at least 3 days before he is eligible for home health benefits or extended care benefits.

The 3-day hospital stay provisions mean a patient must receive the most expensive form of care before he is eligible for less expensive alternatives.

I am offering an amendment to change this requirement to allow home health services and extended care services to be made available to the medicare beneficiary with the 3-day hospital stay if he receives a diagnosis in an outpatient facility indicating that his condition can be best treated in his home or in an extended care facility.

This amendment also increases the number of home health visits which would be permitted under part A to 200 rather than 100. This is to provide a greater incentive to senior citizens to utilize less expensive home health care services.

The merits of this amendment were outlined in the testimony I received from the Visiting Nurse Association, in particular Shirley Whitcomb of the Rhode Island Association of Home Health Agencies.

Speaking of the past experience with the 3-day rule, Miss Whitcomb made this statement:

The 3-day hospitalization as a requirement for Plan A out-of-hospital or 100 percent coverage became a hardship. Many people were not sick enough to require hospitalization. To put them in the hospital in order to fullfill this requirement for Plan A; it was an expensive unnecessary hardship on the hospitals as well as the patients. Many people were so very sick that moving them in the first place and out of their homes in the second place for the short period of time before death was of no benefit and actually cruel. However, without the 3 days in the hospital, the full coverage of Plan A was denied them.

One of the key focal points of the hearing I held in Woonsocket, R.I., was the nutrition needs of our senior citizens. There was much support for S. 1163, the Elderly Nutrition Act, which the Congress has recently passed, and for the inclusion of nutrition aides in the medicare home health services.

The amendment I am now offering to include nutritionists under the Home Health Services was supported in the statements of Rosalind Loxom, R.D., Nutrition consultant for the Providence Nursing Association, and Natile I. Giglio, chief diet counselor, for the Nutrition Council of Rhode Island.

RETROACTIVE DENIAL OF BENEFITS

In his statement at the Providence hearing Dr. Richard J. Kraemer, chairman of the Committee on Aging of the Rhode Island Medical Society, outlined a problem that represented a real hardship for many senior citizens:

Extended care benefits under Medicare were offered as part of a hospital insurance program as a method of preventing overutilization of high-cost hospital beds. Accordingly, the Social Security Administration has denied eligibility criteria for ECF benefits based on the need for general medical management and skilled nursing care on a continuing basis. Unfortunately, there has been a great deal of confusion in the implementation of the program resulting in some instances in retroactive denial of benefits.

To keep hospital costs down in the medicare program, the Social Security Administration has issued strict regulations to encourage the movement of patients to extended care facilities. This, however, according to Mrs. Anna Gray of the Woonsocket Hospital has represented a "real gamble." Often times no nursing home can be located for the patient and if a nursing home is located the patient sometimes finds that the 100-days coverage he thought he had was a myth since he may find that there has been a retroactive denial of his benefits.

Mr. Alfred Farley of Woonsocket, in speaking about his wife's transfer to a nursing home, made this statement:

I thought that Medicare would cover 100 days stay but this was not true. Five days after my wife was in the nursing home the Social Security Administration informed me through the nursing home administrator that Medicare would no longer cover my wife's stay. My wife stayed another 7 days, and it cost me $140. This is a cost that I thought

Medicare would cover and I was disappointed with this action. I think it is unfair.

To correct the possible recurrence of this inequity in the future I am introducing an amendment requiring a certification to be made before the patient is transferred to his home or an extended care facility stating his eligibility for medicare coverage. This presumption of eligibility cannot be changed at all after 5 days of the certification. In no case can benefits be denied before any notice of denial is received.

The last amendment I am offering is an amendment to delete section 232 of H.R. 1 which allows states to set a lower level of reimbursement for services provided poor citizens than the level of reimbursement provided, perhaps, on medicare. This provision would encourage a double standard of medical care which is undesirable and would tend to set back the very progressive effort being made in Rhode Island by the health providers and the State to control costs through prospective contracts rather than through reimbursement formulas.

This amendment deleting section 232 was suggested by the Rhode Island Hospital Association which suggested that not only would section 232 curtail cost incentives and provide a dual class of medicine, but it would be likely that "any underpayment of medicaid beneficiaries would have to be passed on to other patients" including medicare patients.

Mr. President, the amendments I am offering today represent what I believe to be views of my Rhode Island constituents on the health programs covered by the Social Security Act. I look forward to receiving the comments of my colleagues on their willingness to support the amendments I have proposed. I believe the amendments can stand on their merits, and I hope that they would have the support of the Committee on Finance and the Senate as a whole.

ESTABLISHMENT OF A NATIONAL INSTITUTE OF GERONTOLOGY—AMENDMENT

AMENDMENT NO. 1098

(Ordered to be printed and referred to the Committee on Labor and Public Welfare.)

Mr. CRANSTON. Mr. President, I submit for printing today and for referral to the Committee on Labor and Public Welfare, an amendment (No. 1098) I intended to offer to S. 887, a bill to amend the Public Health Service Act to provide for the establishment of a National Institute of Gerontology. My amendment, which I have already discussed with the chairman of the Aging Subcommittee (Mr. EAGLETON), proposes four changes in the bill:

First, charge the Secretary with the responsibility of insuring the education and training of an adequate number of allied health, nursing, and paramedical personnel in the field of health care for the aged;

Second, charge the Institute with the added function of conducting scientific studies to determine and measure the impact on the psychological, psysiological, and sociological aspects of the process of aging of all programs and activities assisted or conducted by departments and agencies of the Federal Government designed to meet the needs of the aging;

Third, charge the Secretary, through the Institute and in conjunction with the Bureau of the Census, with the responsibility of conducting periodic surveys and coordinating data gathering relating to the process of the aging, and of gathering and publishing statistical data relating to significant characteristics and status factors of the aging population, including those with respect to population distribution; income distribution levels, and sources; health and health care; nutrition; housing, leisure-time activities; and employment; and

Fourth, charge the Secretary, through the Institute, with the responsibility of carrying out public information and education programs and disseminating the findings of relevant aging research and studies and other information about the process of aging which may assist all Americans in dealing with and understanding the problems and processes associated with growing older.

These amendments would broaden the scope and focus of activites to be carried out by the new Institute and would be consistent with Senator EAGLETON's intention to change its name to the "Institute on Aging."

Mr. President, during the first week in March, as ranking majority member of the Subcommittee on Aging of the Labor and Public Welfare Committee, I had the privilege of chairing, on behalf of Senator EAGLETON, field hearings on S. 887 and related legislation to promote research into the aging process. The hearings were held in San Francisco, Calif., on March 3 and in Los Angeles on March 4.

I was most impressed with the testimony we received, and on the basis of much of that testimony, I have asked Senator EAGLETON to include me as a cosponsor of S. 887, a bill which he introduced in February of last year and which the subcommittee intends to consider in executive session within the next week.

In discussing the bill with Senator EAGLETON, I suggested, and he agreed, that it would be highly desirable to change the name of the Institute to be created by S. 887 to the Institute on Aging rather than the Institute of Gerontology. Such a change would more appropriately describe the broader mission of the Institute to carry out research on the aging process and the studies, data gathering, and public information programs also called for in my amendment.

The first part of the amendment would charge the Secretary with the responsibility in carrying out his health manpower responsibilities, of ensuring the education and training of an adequate supply of nurses, allied health and paramedical health personnel in the field of geriatrics. We need more stress on developing health care personnel specially trained to deal sensitively with the physical and psychological stresses and problems of the elderly. This training function would not necessarily be carried out by the Institute but could be continued with greater stress and visibility within the Bureau of Health Manpower Education.

The second part of my amendment charges the Institute with the function of conducting thorough scientific studies to determine and measure the impact on the psychological, physiological, and sociological aspects of the process of aging made by all programs and activities assisted or conducted by departments and agencies of the Federal Government designed to meet the needs of the aging. During our hearings in California, I requested witnesses to address themselves to such a proposal, and each of those who did cited the need for this function. Witnesses felt, for instance, that giving the Institute such a responsibility would "create a mechanism for coordinating the efforts of these programs and for fostering a prompt exchange of experience and information that would serve to expedite and facilitate the development of needed knowledge about aging and it would also create a healthier interdisciplinary approach to research in all aspects of aging."

The third part of my amendment would charge the Institute, in conjunction with the Bureau of the Census, with the responsibility of coordinating HEW data gathering regarding aging and instituting appropriate programs to gather and disseminate widely statistics on all significant characteristics and status factors of the elderly population: including population distribution; income distribution levels and sources; health and health care; nutrition; continuing education; housing; leisure-time activities; mobility; and employment. We need a central and computerized data bank to establish all of the factors affecting the characteristics of our older citizens. This information is vital to effective decisionmaking in the Congress and the excutive branch regarding governmental programs to assist older Americans and regarding carrying out effective evaluations of those programs.

The fourth part of my amendment would direct the Institute to carry out public information programs to disseminate the findings of Institute and other relevant research and studies and other information about the process of aging which may assist the elderly and near-elderly in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

We need a national education program directed to the people in the fourth and fifth decades of life—who will be elderly in 10 years—to help them prepare for the later years by proper attention to their overall health—dealing with attitudes and behavior in respect to smoking, obesity, accident avoidance, predictive health examinations, and suicide, for example. We also need to develop in the population as a whole a more sympathetic and informed attitude toward our older citizens—their problems and potentialities. Many myths about old age need to be dispelled.

Mr. President, I am most pleased that the Subcommittee on Aging will move

ahead shortly with S. 887 and my proposed amendments to that bill. The testimony presented to us in California pointed to the marvelous potential for enriching and lengthening the human life span, for enabling each of us to live more creative, productive, and healthful lives. I believe it is time for us to begin to realize this potential now, and I am pleased, as a member of the Subcommittee on Aging, to be able to play a vital part in this exciting endeavor.

Mr. President, I ask unanimous consent that the text of the amendment I am submitting today be printed in the RECORD at this point.

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

AMENDMENT NO. 1098

On page 2, line 25, insert "(a)" before "The".

On page 3, line 20, strike out all that appears and insert in lieu thereof the following "institutions. In carrying out his health manpower training responsibilities under the Public Health Service Act or any other Act, the Secretary shall take appropriate steps to ensure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

"'(b) The Secretary shall, through the Institute, conduct scientific studies to measure the impact on the physiological, psychological, and sociological aspects of aging of all programs and activities assisted or conducted by departments and agencies of the Federal Government designed to meet the needs of the aging.'"

"'(c) The Secretary shall, through the Institute and in conjunction with the Director of the Bureau of the Census in the Department of Commerce, conduct periodic surveys, and coordinate such data gathering as is carried out within the Department of Health, Education and Welfare, relating to the process of aging, to gather and publish statistical data relating, to the maximum possible extent, to all significant characteristics and status factors of the aging population, including those with respect to population distribution; income distribution, levels and sources; health and health care; nutrition; continuing education; mobility; housing; leisure-time activities and employment.

"'(d) The Secretary, through the Institute, shall carry out public information and education programs designed to disseminate as widely as possible the findings of Institute sponsored and other relevant aging research and studies, and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.'"

ANNOUNCEMENT OF HEARINGS ON PEACE CORPS AUTHORIZATIONS

Mr. MANSFIELD. Mr. President, on behalf of the distinguished Senator from Arkansas (Mr. FULBRIGHT), I wish to announce that the Committee on Foreign Relations has scheduled a hearing on fiscal year 1973 authorizations for the Peace Corps on Friday, April 7, 1972, beginning at 10 a.m. in room 4221, New Senate Office Building. Persons interested in testifying should communicate with the chief clerk of the committee without delay.

ADDITIONAL STATEMENTS

HEARINGS OF THE APPROPRIATIONS COMMITTEE ON THE OVERALL FEDERAL BUDGET

Mr. ELLENDER. Mr. President, in early February, it was my privilege to preside as chairman of the Senate Committee on Appropriations over hearings which covered an overall review of the Federal budget. During 4 days of hearings, a day and a half was given to Government witnesses. Only eight requested to be heard, and they were heard. Two and one-half days of the four were allotted to public witnesses, and during this time we heard from 42 different individuals and organizations.

Last year, the Committee on Appropriations held similar hearings, but at that time it took testimony only from governmental witnesses. This year, I felt that the review should be broadened in scope, so I requested that public witnesses be given the opportunity to testify on the Federal budget. I was greatly pleased by the response, not only in the number of witnesses but in the diverse elements of our society that they represented.

I suggested to the committee that hearings on the overall budget be opened to the public for several reasons. First, for some time now I have been concerned that many of our citizens apparently feel that they have no effective access to the Congress concerning the Government's overall spending programs. I have heard many articulate, responsible, and concerned citizens stress over and over their feeling of helplessness. Whether rightly or wrongly, many of these individuals, either speaking as private citizens or as representatives of groups, were convinced that the Government of their country was embarked on misguided courses. These courses were reflected in the national budget which is today more of an economic blueprint for our national activities than it is a simple "budget" or operating plan for our Government in a strict and narrow sense.

I think it can be truly said that much of the current outcry against our national priorities in favor of a change in our "national goals" comes from those opposed to our continued presense in Vietnam and to the current levels of Pentagon spending. Yet there is more to it than this. The budget process in this country is essentially an exercise in secrecies. This does not come about by design or by conspiracy. On the contrary, it is simply a reflection of the way the budget is developed each year before it is presented to the Congress.

Accordingly, I felt it would be appropriate if the Senate Appropriations Committee could take one small step to open up the process. I thought the public should be allowed the opportunity to be heard and should be heard on those directions and courses reflected in the Nation's economic blueprint. I am pleased the committee as a whole accepted my recommendation that the hearings be thrown open to the public. These hearings were very well received and the committee has been complimented time and time again on this initiative.

My second reason in suggesting open hearings on the entire budget was to give the committee members themselves, and indeed the entire Senate and House of Representatives, the opportunity to place things in a better perspective. It is my feeling that too often the Congress operates on the "cubby hole" approach. Of necessity, we must be concerned with our limited areas of expertise and experience. Too often we are forced to rely on governmental witnesses for our opinions and evaluations. Too often we are told things are just as they should be and we have no real recourse but to believe those who are doing the telling.

I believe the committee members should have the opportunity of listening to informed, articulate citizens who believe things are not as they should be and are able to present reasons to back up their thinking. We need not pass on the validity of that thinking or accept either the pros and cons presented to us. I do not propose to do so at this time. But I do think it important that we be reminded that there is a different approach, that there are different values, and that there are other viewpoints that might justifiably be taken into account in the budget process. Perhaps these viewpoints and judgments are given the necessary attention elsewhere in the budget process, perhaps they are not. Frankly, I cannot say at this time, but that is one reason why I desired the Senate Appropriations Committee to take notice of them. I hope that we can gain better attendance from Senators at next year's hearings.

A third reason for the committee's holding open hearings deals with my firmly held belief that the public at large could be better apprised of the implications the budget carries for them. Our national financial figures have reached such a point that they are virtually impossible to understand by the man in the street. A debt of $450 billion becomes an abstract figure. Ancient man looked at the moon, but did not know what it was and did not know that it affected the tides. Modern man looks at the moon, and can appreciate the fact that it is a satellite approximately 239,000 miles away. Yet few of us can appreciate or even understand the distance in light years from the Earth to the nearest star beyond our sun. A light year is an abstract figure. We know only that it is a long way, just as we know that $450-odd billion is a lot of money. We can now appreciate the fact that the sun and moon affect the ocean tides here on Earth. Yet the man in the street does not fully understand the implications of the Federal budget, the Federal debt, and I sometimes doubt that our economic expert advisers do either.

It is my hope that the hearings now on every Senator's desk will let us move at least one step along the way of filling this gap in the public's understanding.

During the course of the hearings, the committee has heard testimony from both governmental and public witnesses,

and their testimony covered 850 pages. I urge Senators to peruse these hearings when they have time, and I also suggest that their staffs could analyze the data contained in the hearings for the purpose of summarizing the information that might prove valuable to all Senators as we take up the various appropriation bills during the remainder of this session.

Mr. President, when I came to the Senate 35 years ago, the outlays of the Federal fund budget for the first fiscal year I served totaled $7,733,000,000, and the Nation's public debt amounted to $36,425,000,000. Based on the 1973 budget, the public debt would aggregate $481,878,000,000, and outlays of the Federal fund budget for fiscal year 1973 are estimated at $186,784,000,000. Just to service our present debt will require the payment of interest amounting to almost $22 billion per year, which is almost three times the total outlays of our Government when I first came to the Senate.

Mr. President, our huge debt and the alarming rise in Government spending deeply concern me. I am concerned because I am not confident that we are efficiently and effectively allocating our limited resources to the various functions of our Government. I am concerned that we will saddle our children and our children's children with a debt that our Nation's production base will not permit us to service in future years. I am concerned that our present method of budgetary review is not effective in enabling us to perform the responsible action we are charged with under our Constitution. These and other concerns prompted me to hold the aforementioned hearings on the overall budget review.

Mr. President, while I feel that these hearings were a step in the right direction, I am aware that much more must be done and should be done to assist all of us—the Congress as well as the executive branch—in arriving at a much more effective use of our Nation's resources. Many witnesses who testified before the committee felt that we are allocating too much of these resources to defense. Many of these same witnesses felt that a greater portion of our resources should be allocated to health, education and a myriad of welfare programs.

Some witnesses felt that we are spending too much on space research and they were not pleased with the benefits derived from the costs these programs entailed. Others felt that we are spending more than is necessary in the atomic energy area and they believe that more funds should be spent in the field of coal research.

Six mayors from some of our Nation's largest cities, representing the Conference of Mayors and the National League of Cities, and led by the mayor of my own State of Louisiana's largest city, the mayor of New Orleans, Moon Landrieu, gave eloquent testimony concerning the plight of our cities and what was necessary to restore them to life. I urge Senators to read their statements.

The Director of the Office of Management and Budget, Mr. Shultz, gave the committee a spate of facts and figures on budget outlays. In this connection, for example, he pointed out that civilian and military personnel costs in the fiscal 1973 budget amounted to 57 percent of the total defense budget, leaving only 43 percent of that budget for procurement, construction, and research development, test and evaluation. An interesting statistic related to this same item indicates that $1 billion would have funded the pay and allowances for 219,000 members of our Armed Forces in fiscal year 1964, but this same sum will only fund the pay and allowances for 105,000 personnel in fiscal year 1973, an increase in cost of 109 percent.

Mr. President, I might add that these hearings were directed not only toward the outlays side of the budget, but also to receipts side. Under Secretary Walker was interrogated on the various estimates for receipts contemplated in fiscal year 1973, including the methods employed by the Treasury Department in making determinations concerning receipts.

Mr. President, I could go on for hours about the facts and figures and other budgetary data contained in these hearings, but it would serve no useful purpose. The facts and figures and other valuable information we, in Congress, need are contained in the 850 pages of testimony on each Senator's desk.

I am hopeful that his information, along with the other data that we will receive during the course of our review of the individual agency budgets, will enable us to reach the laudable goal of making a more effective and efficient allocation of our resources. I am hopeful that the hearings will enable all of us to get the "big picture," so to speak, of our Government's operations, as I said earlier. I believe we should begin to think in terms of our overall Federal budget, rather than in terms of the segments for which the various committees of the Congress and the subcommittees of the two Appropriations Committees of both bodies have prime responsibility.

In this connection, Mr. President, I should like to recommend that the time has once again arrived for an extensive review of all ongoing Federal projects for the purpose of eliminating many programs which serve no useful purpose and may have outlived their usefulness. I am cognizant of the huge task such an undertaking would be, but I feel we have the talent available to do the job.

To accomplish this worthy goal, the President—with the assistance of the Congress—should establish a Hoover-type Commission. Further, the congressional committees involved in the Federal budgetary process, namely the House Ways and Means Committee, the Senate Finance Committee, and the Appropriations Committees of the House and Senate, working as a unit, and in conjunction with this Commission, should assist in the undertaking of this mammoth assignment.

Our Nation's survival depends on the recommended aproach being implemented now. Fiscal responsibility cannot wait for the year following an election year.

The time has come when both the President and Congress should put on the mantle of the statesman, and politics must be made subservient to economics. For unless this is done, I fear that our spending for defense and other functions of our Government will be in vain, if in the end our economy collapses.

WHO DISCOVERED AMERICA?

Mr. BUCKLEY. Mr. President, I invite the attention of Senators to some interesting historical data uncovered by Judge William Hughes Mulligan, of the U.S. Court of Appeals for the Second Circuit. As a former dean of the Fordham Law School, now sitting on one of our prestigious appellate courts, Judge Mulligan is widely known for his scholarship and sobriety. Thus his observations delivered in an address before a distinguished audience in New York City on March 17 last should command the special interest of all who seek to know the true facts surrounding the discovery of America.

I ask unanimous consent that the address be printed in the RECORD.

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

ADDRESS BY HON. WILLIAM HUGHES MULLIGAN, JUDGE, U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

A few years ago when I was in Ireland, I visited the ancient port city of Galway, where I was assured by a local that Christopher Columbus had stopped there to bring on board an Irish navigator who actually guided him to the New World. A few months ago I was in the company of the Chief Judge of the Supreme Court of Ireland, a typically urbane, scholarly, and intellectual Irishman not given to the easy acceptance of leprechauns or unfounded legends. I asked him about the story of the Irish navigator, and I was frankly surprised when instead of debunking it, he responded "Oh yes, the story is well authenticated. The man's name was Lynch." With all due respect, I could not accept the story; there was no record that Columbus ever made any such diversion to Galway, pleasant though it might be. It seemed more logical to me that Lynch, great sailor that he must have been, had sailed from Ireland to Portugal and was the navigator from the start.

Becoming more interested, I studied the celebrated work on the subject, Samuel Eliot Morison's "Admiral of the Ocean Sea," and I discovered to my dismay that Lynch's name does not appear on the list of the crew of any of the three vessels. This in turn led me to a somewhat spectacular discovery which I must share with you tonight in the privacy of this room. Morison's book gives a physical description of Columbus which was provided by his own contemporaries—I quote pp 40–41. "He was more than middling tall, aquiline nose, blue eyes, complexion light, and tending to bright red, beard and hair red. When he was angry he would exclaim "May God take you." In matter of religion he was so strict that for fasting and saying all the canonical offices he might have been taken for a member of a religious order." Gentlemen, in all honesty and frankness, how many religious, blue eyed, red faced, red haired Italians have you met in your life?

Friendly Sons and friends, I am not only suggesting but I think the facts clearly establish that in reality Columbus was Lynch—or Lynch was Columbus whichever way you want it. There is even further evidence: Mor-

ison, who claims that Columbus was born in Genoa, admits that Columbus could not read or write Italian—neither could Lynch. Morison—and we of course could expect no help from Samuel Eliot Morison—further states that Columbus spoke Spanish with a Portuguese accent. Actually, of course, it was Irish he spoke and isn't it a mark of Lynch's great leadership and seamanship that he could make that Mediterranean crew understand his orders even though they were given in Gaelic? Gentlemen, we have convicted men of serious crimes in the federal court on less evidence than we have here, and my court has affirmed them.

Lest our Italian friends take offense, I assure them that I intend no disrespect at all, and on October 12th I will attend the annual Lynch Day Parade, at Lynch Circle and watch with pride as the Knights of Lynch pass by.

THE GENOCIDE CONVENTION: UNJUSTIFIED DELAY

Mr. PROXMIRE. Mr. President, much has already been said in support of the Genocide Convention. In the long years since the treaty's conception distinguished citizens and respected organizations have spoken eloquently on behalf of this humanitarian document. But I would like to call to the attention of my colleagues an article written by former Justice Arthur Goldberg and Prof. Richard Gardner of Columbia which clearly states the case for ratification. 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 GENOCIDE CONVENTION

(By Arthur J. Goldberg and Richard N. Gardner)

WASHINGTON.—It is now more than twenty-five years since the United Nations approved a convention on the prevention and punishment of the crime of genocide.

Seventy-five countries now have ratified the convention. The United States is the most prominent U.N. member that has not. One reason for our country's failure to ratify—very possibly the principal reason—has been the opposition of the American Bar Association, recorded in a decision of its house of delegates in 1949.

Since then, however, sentiment within the association has changed. At the midyear meeting of the house of delegates in February 1970, a proposal to reverse the 1949 position and to place the American Bar Association on record in favor of the Genocide Convention failed by a vote of 126 to 130.

Still more significant, every section and committee of the association having specialized competence in the subject matter has come out in support of ratification of the convention during the last few years.

Ratification of the Genocide Convention also has been endorsed by a number of past presidents of the association.

However, two members of the association, Eberhard P. Deutsch and Alfred J. Schweppe, appeared on March 10 last year on behalf of the association to testify in opposition to the Genocide Convention in hearings held before a Senate Foreign Relations subcommittee. They presented legal objections that have been raised against the convention.

After considering these arguments, the full Senate Foreign Relations Committee reported favorably on the convention by a vote of 10 to 4 and recommended that the Senate advise and consent to ratification. After carefully reviewing the arguments, the committee concluded:

"We find no substantial merit in the arguments against the convention. Indeed, there is a note of fear behind most arguments—as if genocide were rampant in the United States and this nation could not afford to have its actions examined by international organs—as if our Supreme Court would lose its collective mind and make of the treaty something it is not—as if we as a people don't trust ourselves and our society."

We believe the report of the Senate Foreign Relations Committee provides an authoritative refutation of the legal arguments opponents of the Genocide Convention have employed to justify their opposition for nearly a quarter of a century.

We also find the objections against ratification of the Genocide Convention to be without substance. The arguments in favor of ratification, on the other hand, seem to us compelling.

Our adherence to the Genocide Convention can make a practical contribution to the long and difficult process of building a structure of international law based on principles of human dignity. It will put us in a better position to protest acts of genocide in other parts of the world and will enhance our influence in United Nations efforts to draft satisfactory human rights principles.

We do not say that our adherence to this convention will work miracles. It may not bring very dramatic benefits in the short run. Let us remember, however, that none of the great documents of human civilization produced instant morality—not even Magna Carta or our own Bill of Rights. The point is that they did shape history in the long run. We believe the same may be true of the Genocide Convention, if we only give it a chance.

The Genocide Convention outlaws action that is repugnant to the American people and to our constitutional philosophy. We should not decline to affirm our support for principles of international law and morality in which we believe. Our country was founded on a passionate concern for human liberty reflected by the Bill of Rights and the Constitution. We believe that concern is very much alive today.

It is inconceivable that we should hesitate any longer in making an international commitment against mass murder.

LINCOLN DAY ADDRESS BY ROBERT H. FINCH, COUNSELOR TO THE PRESIDENT

Mr. CASE. Mr. President, I had the privilege of being present at the Hunterdon County, N.J., Lincoln Day dinner on February 11, 1972.

Robert H. Finch, Counselor to the President, made the principal address at that dinner. He discussed at length the life and times of Lincoln and then extrapolated lessons learned from Lincoln to modern times.

Mr. President, I ask unanimous consent that Mr. Finch's remarks be printed in the RECORD.

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

LINCOLN'S LIVING LEGACY

(By Robert H. Finch)

Lincoln was never a very popular President. He emerged a minority victor from the close and bitter election of 1860, and in the off-year elections in 1862 the Republican Party lost the critical states of New York, Pennsylvania, Indiana, Illinois, and Ohio. In 1864, even as an incumbent and with the seceded Southern States not voting, he only received 55% of the vote, the rest going to his Democratic opponent whose platform was specifically anti-Lincoln and anti-War; a shift of only 2% of the total, just 83,000 votes, could have defeated him.

Newspaper editorials described him as a "half-witted usurper" and a "mole-eyed monster." Democrats compared him to "the original gorilla," and Republicans reviled him as a man "without any spinal column" and "an awful, woeful ass."

Much satirized and criticized in his own time, I suspect that Mr. Lincoln would be amazed and amused by the way he has almost been deified since.

Things changed so fast in America early in the 19th century that it is easy to lose a sense of historical time and perspective. Because Lincoln wore trousers instead of breeches and rode in railroads instead of open carriages, and because we have photographs instead of paintings to see what he looked like—and partly, I suppose, because of Raymond Massey—we sometimes tend to think of Lincoln as being quite contemporary to us. And indeed he is in spirit.

But in fact, when Lincoln was born, in 1809, Thomas Jefferson was still the President of the United States. The country was hardly twenty-five years old, and the daring experiment of seeing just how self-evident it was that the people were capable of governing themselves had hardly even begun. Besides, it was still being overseen by the people who had devised it, and supported by the people who had fought for it.

Jefferson and Adams died hours apart on the 4th of July 1826. Twelve years later, in Springfield in 1838, in his first major speech of which we have any record, the twenty-nine year old Lincoln warned about the danger of "national suicide" unless we honored and maintained the delicate balance which the Founders had devised for ensuring popular, responsible, and responsive government. Twenty-five years later, and just a generation after Jefferson's death, President Lincoln at the outset could only watch while half the nation made just such a determined suicide attempt.

A man of peace to the depths of his being, he believed strongly enough in the principle of popular government to lead his countrymen into the bloodiest civil war in the history of the world to vindicate it. At the be ginning of the war, he told his secretary John Hay that, "For my part, I consider the central idea pervading this struggle is for the necessity that is upon us of providing that popular government is not an absurdity. We must settle this question now, whether in a free government the minority have the right to break up the government when they choose. If we fail it will go far to prove the incapability of the people to govern themselves."

For a hundred years after the Civil War, the filling out of our continent and the fulfilling of our role in the world occupied our time and talents. Then a decade ago, things seemed to start going wrong and breaking down. Gaps began to open up through our affluent society: Generation gaps, communication gaps, credibility gaps.

In 1968 when Richard Nixon was elected President, he found himself at the head of a country which almost seemed on the brink of a psychological and social civil war. "Never," he said, "has a nation seemed to have had more . . . and enjoyed it less." In his inaugural address, he took his cue from the sign a young girl held up at one of his railside stops during the campaign: It said: "Bring Us Together."

But looking deeper at America, I think that President Nixon realized that what had really happened was that once again, as in 1861, America had somehow lost the sight . . . or lost the grasp . . . of that essential thing, that essential *idea* which *makes* America what it is.

In growing so big and so great and so rich and so strong . . . America had grown out of touch and out of reach.

It appeared that the people no longer governed here.

Now, gathered as we are to honor Abraham Lincoln, I want to say that in my judgment, the principle for which he stood . . . the principle that the people are capable of governing themselves . . . has *never* been more at risk or more at stake at any time since 1861 than it is now . . . in this year of 1972.

In his first State of the Union message, President Nixon laid this on the line to the Congress. He said, ". . . The further away government is from the people, the stronger government becomes and the weaker people become. And a nation with a strong government and a weak people is an empty shell."

He followed this up with six great goals, each one aimed at redressing the balance of power which had grown away from the people where it belonged. Since Lincoln's time, the President said, we have too often "become a nation of the Government, by the Government, for the Government."

Time after time, in many different forums and places, President Nixon has urged the necessity for bipartisan consideration of these goals because they are necessary *for America*. And America is above any Party.

And time after time he was ignored or rebuffed. Even so strong a critic as James Reston, writing in *The New York Times*, said that:

"For more than a year now, [President Nixon] has sent to Capitol Hill one innovative policy after another: on welfare reform, revenue-sharing reform, government reform, postal reform, manpower reform, Social Security reform, reform of the grants-in-aid system, and many others.

It is not necessary to agree with his proposals in order to concede that, taken together, they add up to a serious and impressive effort to transform the domestic laws of the nation, all the more remarkable coming from a conservative Administration, and that they deserve a more serious and coherent response than they have got so far from the Democratic Party and the Democratic majority in the Federal Congress.

What the Democrats are doing now [Mr. Reston concluded] is merely sniping at the President's programs and often saying some damn silly things in the process."

Once again this year, in his State of the Union message, President Nixon exhorted the Congress to rise above partisan interest . . . to serve the national interest. So far the result has been desultory and disappointing.

But, as you know, this is an election year, and we will be able to take our case to the people of the country. Once again we shall be putting to the proper and ultimate test *Lincoln's* faith and conviction.

Because, as Lincoln asked, "Why should we not have a *patient faith* in the *ultimate wisdom of the people?*"

So tonight we honor Lincoln. Soon we shall have an opportunity which, *fortunately*, is given to few generations: We shall have the opportunity to fight an election campaign for . . . it seems to me . . . little less than the continued survival of the America Lincoln fought and died to leave us. Because the stakes today are little less than whether we will continue to have government *of* the people, *by* the people, and *for* the people in this country in the future.

That is the choice we bring to the American people in 1972, and that is the choice which we must make them understand in the coming campaign.

It is not a "sexy" choice dripping with lots of charisma, and with slogans sprinkled and sparkling all over it. It's not the kind of choice that makes you want to squeal and pull the cuff links out of its sleeves. Because it is a choice with its sleeves rolled up. It's a choice you have to be willing to work hard for, just as Lincoln and hundreds of thousands of Americans were willing to fight and even to die for.

In the one hundred and seven years since Lincoln's death, the face of the American nation has changed beyond all recognition. Except for his own face on the $5 bill, there would be little that he would recognize or remember if he were to return to the America of 1972 for a few hours this evening.

But he *would* be able to take a test of the spirit of the nation, to see if that faith in government of the people, by the people, and for the people was still burning bright in the hearts and minds of America tonight.

And I'm afraid that before very long he would see that many of us have come to a full spiritual circle, and that in many ways we are poised once again as we were in 1861.

But the principle, the idea, is still there. And it is stronger today than it was in Lincoln's day . . . because thanks to him, it has had another one hundred and seven years to prove that it can work.

Lincoln knew that government of the people, by the people, and for the people in America might turn out to be impossible. He saw it for the magnificient gamble it is. But his confidence in its right and wisdom was unshakable.

We of this latest generation of 1972 must draw upon the legacy of Lincoln to disenthrall ourselves from the passions and pressures and preoccupations of the times and of the individual issues of the times, and work for this most basic and vital principle of our nation which now once again, as it did in Lincoln's time, needs to be preserved and protected by thoughtful men and women of every party.

EFFECTIVENESS OF VACCINES

Mr. RIBICOFF. Mr. President, I am today releasing a report prepared at my request by the General Accounting Office concerning the regulation of vaccines by the Division of Biologics Standards in the Department of Health, Education, and Welfare. This report focuses on two major problems: The Division's apparent policy, pursued until 1969, to allow the release of subpotent influenza vaccine and its failure to require that vaccines sold to the public be effective.

Specifically, the report indicates that there are 32 biologic drugs or vaccines on the market today that are ineffective. All of those drugs have been on the market for at least 10 years; some have been sold for decades. DBS has allowed all of them to remain on the market, even though many of them can cause serious side effects.

With respect to influenza vaccine, the report reveals that for a period of at least 3 years, from 1966 through 1968, DBS allowed manufacturers to sell influenza vaccine that did not come close to meeting the announced standard for vaccine potency according to the manufacturers' own tests. A majority of the lots of influenza vaccine submitted for release during this period failed to meet the standard. Nevertheless, the DBS did not reject a single influenza vaccine lot submitted to it during that period. According to statistics of the Center for Disease Control, over 20 million doses of influenza vaccine are sold each year in the United States.

BACKGROUND OF THE REPORT

The report I am releasing today has been in preparation for over 8 months. Last summer, after discussions with Dr. J. Anthony Morris, a microbiologist with the DBS, and James Turner, a consumer advocate with expertise in food and drugs, I asked the GAO to look into the performance of the DBS in a number of important areas. This is the first of GAO's reports in response to that request; a later report will deal with the Division's regulation of adenovirus and pertussis. On October 15, 1971, and again on December 8, I called upon HEW to conduct a full review of the performance of DBS. On those occasions, I released papers prepared by Dr. Morris and Mr. Turner which raised a number of disturbing questions about the quality of our vaccines and the policies of DBS.

Since last summer, impartial GAO investigators have been at work examining the records and documents of the DBS, and talking to the people who have been responsible for vaccine regulation. The entire GAO report is based upon the DBS's own official documents and records, not upon charges made by anyone inside or outside the agency. It was compiled from the recorded, day-to-day observations of those who actually conducted the control operations for the DBS.

The report is an appalling chronicle of omission and bureaucratic failure. It is deeply unsettling that the Government's efforts to protect the health and safety of the public could remain ineffective for so long.

EFFECTIVENESS OF VACCINES

Let me now turn to the substance of the GAO report. With respect to the effectiveness of vaccines, the GAO report reveals that 75 out of 263 biologic products licensed by DBS were not recognized as being effective by most of the medical profession, according to a memorandum by the Director of DBS. The GAO concluded that—

> DBS has not required biological products to be effective as a condition of licensing and has not removed ineffective vaccines from interstate commerce.

There are at least 32 vaccines currently on the market that are "generally regarded as ineffective by the medical profession," according to the DBS Director. I am releasing a list of these ineffective products. All of these drugs have been on the market for more than 10 years, some of them for decades. Some of them can cause serious side effects. For example, one such drug, licensed in 1956 for the treatment of "upper respiratory infections, bronchitis, infectious asthma, sinusitis, and throat infections," contains six ineffective organisms. According to the circular on the package there have been, associated with the use of the drug, "reports of children getting systemic reactions: Fever, rash, abdominal cramps, and diarrhea 4 to 8 hours after injection." All this from an ineffective drug.

Or consider the possible side effects noted on the package circular for another ineffective vaccine used for treatment of infections and inflammation of the eye:

> Febrile reactions, preceded by chill . . . temperature of 101–104. Fever subsides in a few hours and the patient may be left with

muscular pains; chilly sensations and malaise may be expected . . . The patient should be kept under close observation through the period of increased temperature, and if excessive fever occurs, it should be combated vigorously.

There are many other examples.

And yet, in all these years, DBS never moved to take a single one of these ineffective drugs off the market, or even to inform the public or the medical profession of their ineffectiveness. In light of this kind of adverse reaction data, it is incredible that DBS could license such biologics as "safe." Since the agency believed that there was no corresponding benefit for the harm suffered by patients, it could have moved to take these drugs off the market under its undoubted authority and responsibility to withhold licenses for drugs which are unsafe. Instead, the DBS maintained that it had no authority to regulate biologics for effectiveness and simply washed its hands of the problem.

LEGAL AUTHORITY TO REGULATE EFFECTIVENESS

According to the DBS, its failure to move against ineffective vaccines was caused by a belief that HEW did not have statutory authority to require that vaccines be effective in use. HEW's General Counsel believed that authority had existed since the Kefauver drug amendments of 1962. Thus, while HEW argued that it had the authority and wanted to delegate it to the DBS for enforcement, DBS argued there was no such authority to delegate and recommended that additional legislation be sought before moving against ineffective biologic drugs.

An exchange of memos within HEW in 1969 illustrates the nature of the regulatory impasse. On February 28, 1969, the HEW General Counsel sent a memorandum to the DBS taking the position that HEW had responsibility to assure that all drugs—including biologics licensed by DBS—were effective and that HEW was prepared to delegate this authority to DBS. On July 30, 1969, the Director of DBS replied, stating that he opposed such a delegation and again urging the Department to seek additional legislation. The Director's opposition to a simple administrative solution was especially perplexing since he knew that there were 75 licensed biologics that were ineffective. In addition, his stated reasons for opposing a simple delegation of existing regulatory authority are disturbing. He wrote:

In view of the continuing undercurrent recommending the combining of the DBS with Food and Drug, we are quite reluctant to request such a delegation (of authority to require biologics to be effective) since it would offer an excellent opportunity of such proponents to renew their efforts in creating one central agency.

In fairness to the DBS, it should be pointed out that it did seek to persuade HEW to seek new legislative authority to regulate biologics for effectiveness. However, the Division refused to initiate or even cooperate in developing any alternative course of action to deal with a serious public health problem. Even worse is the implication of the Director's memorandum of July 30, 1969, that he felt it more important to foreclose any real or imagined infringement on the separateness of his domain than to take the most direct means at hand to protect the public from ineffective, sometimes harmful vaccines.

For 10 years, beginning in 1962, while memos were quietly exchanged within the bureaucracy, nothing was done to protect the public against drugs that were ineffective. The drugs stayed on the market; people continued to get adverse reactions from them. Those drugs are on the market today, 10 years after HEW was given authority to do something about them.

Thirty-nine days after I raised the issue on the floor of the Senate, HEW took its first steps toward a responsible position. A memorandum from HEW General Counsel Wilmot Hastings concluded that the Department did have authority to regulate all vaccines for effectiveness. Furthermore, he stated that the Department's authority would soon be delegated to DBS.

Several months passed. On February 7 high officials of HEW and the National Institutes of Health were shown a draft of the GAO report and were made aware that the information concerning ineffective vaccines would be made public. In announcements in the Federal Register on February 25 and March 15, HEW declared that vaccine manufacturers would finally have to present evidence of the effectiveness of their vaccines or lose their licenses. To date, however, only manufacturers of bacteriological vaccines have been required to come forward with proof of efficacy. No such requirement has apparently been laid down for manufacturers of virus vaccines. I shall continue to monitor the new program closely to assure that hopeful public announcements are followed by decisive regulatory action. The public will benefit from the new policy only if it is rigorously enforced with respect to all vaccines.

INFLUENZA VACCINE POTENCY

One vaccine that should be subjected to close scrutiny in this program is influenza vaccine, the other major subject of the GAO report. The report deals with both efficacy and potency of influenza vaccine. Efficacy refers to a vaccine's ability to cure, combat, or prevent a disorder. Potency refers to a vaccine's ability to produce a certain result in laboratory tests, to show that it contains the proper amounts of antigens. A vaccine may be potent—that is, contain the prescribed amount of antigens—and still not be effective if, for example, the antigens it contains do not protect against disease.

Both the efficacy and the potency of influenza vaccine have been, and continue to be, subject to substantial question. For an extended period prior to 1969, the potency of influenza vaccine went virtually unregulated. The GAO report tells a shocking story about the DBS's abdication of a clear responsibility. The DBS control official for influenza vaccine has stated that, in his opinion, if manufacturers could get away with it, they would sell water as vaccine. The GAO report indicates that, between 1966 and 1968, with respect to influenza vaccines, manufacturers were being allowed to do very nearly that.

The first influenza vaccine was licensed in 1945. As of December 1971 there were outstanding eight licenses to manufacture influenza vaccine, and six companies were actually manufacturing it. In 1970, over 20 million doses of influenza vaccine were sold, making it one of the largest selling vaccines produced in this country.

As interpreted by the Department of Health, Education, and Welfare, the law requires every licensed vaccine to be safe, pure, potent, and effective. In order to determine potency, DBS prepares a reference vaccine containing—according to a prescribed test—a given amount of antigens. Manufacturers must then apply the same test to vaccine lots they submit for release, and their results must show the vaccine to meet a level of antigens content equal to, or at a certain percentage of, the DBS reference vaccine. By regulation (42 CFR 73), a licensed vaccine cannot be released unless the manufacturer's tests show the vaccine to be safe, pure, and potent. The GAO report shows that, with respect to influenza vaccine—at least between 1966 and 1968—this rule was utterly ignored.

In addition to the manufacturer's tests, which are required, DBS may itself require a manufacturer to submit—prior to the release of vaccine to the public—samples of the product lots and the protocols containing the results of the manufacturer's tests. DBS reviews these protocols and may conduct its own tests. DBS may then either release the lots or reject them.

On September 18, 1962, however, in an extraordinary memorandum, DBS severely circumscribed the scope of its own independent testing of influenza vaccine. According to the memorandum, the decision to release a vaccine lot was to be based only on the manufacturer's test results, not upon the DBS test results, even if the two were inconsistent. As explained by DBS officials in 1971:

Lots were released on the basis of satisfactory information furnished by the manufacturers and tests by DBS were a mechanism to be sure that manufacturers could perform the tests and that results were reliable.

As if this abstention from responsibility were not enough, DBS then began to release many lots of influenza vaccine that were subpotent even according to the manufacturer's own test results.

In the years 1966, 1967, and 1968, manufacturers submitted 221 lots of influenza vaccine to DBS for release. According to the manufacturers' own test results, 115 of these 221 lots were subpotent and should have been rejected, even under the standard of the 1962 memorandum. And yet DBS allowed the release of every single one of the 221 lots, including all 115 which even the manufacturers' tests clearly showed to be subpotent.

Not only was subpotent influenza vac-

cine being released indiscriminately, but in many cases the subpotent vaccine lots which were supposed to be as potent as the DBS reference vaccine fell short by enormous margins. In some cases, influenza vaccine was released that had less than 1 percent of the potency required. In addition, a number of the 106 lots which were potent according to the manufacturer's test were shown to be subpotent by subsequent DBS testing. For example, one manufacturer submitted a lot containing three separate strains of influenza vaccine. According to the manufacturer's test results, the strains were, respectively, 100 percent, 171 percent, and 149 percent as potent as the DBS reference vaccine. DBS tests, conducted on September 13, 1967, showed their respective values to be 0.8 percent, 15 percent, and 12 percent. Incredibly, even this lot was released for sale to the public.

In another instance, the DBS control officer asked one manufacturer to perform tests first on a vaccine known to be that of the manufacturer, and later on a series of unlabeled vaccines, one of which was the same as vaccine that had been tested previously. When the manufacturer knew he was testing his own vaccine, the test results were markedly higher than when the same vaccine was tested as an unknown. Thus there is substantial doubt about how many of the 106 vaccine lots shown to be potent according to the manufacturer's tests did, in fact, meet the unenforced standards.

The GAO report shows that for at least 3 years absolutely anything a manufacturer submitted would be released. Responsibility for this frivolous policy extends to the highest levels of the DBS hierarchy. The ultimate decision to release a vaccine lot is made at a policymaking level, and there is no indication that policymakers were unaware of what they were doing. The fact that vaccine lots had failed manufacturers' tests appeared clearly on the documents on which their decision was supposed to have been based.

DBS has indicated that the reason for its lax attitude toward the results of potency tests was its lack of faith in the potency test used at the time. Some changes have been made since 1968 and manufacturers have stopped submitting vaccine for release that is subpotent according to manufacturers' tests. However, as Morris and Turner have demonstrated, criticism of the inadequate test and efforts by DBS scientists to find improved ways of testing were strongly discouraged by the DBS leadership throughout the 1960's. Even today, doubts remain about the validity of the DBS potency test.

EFFICACY OF INFLUENZA VACCINE

In addition to problems of subpotent influenza vaccine, there remain substantial questions about the vaccine's efficacy. As early as 1962, the Public Health Service's Center for Disease Control estimated that the vaccine was only 20 to 25 percent effective, a level far below that of any other major vaccine. A 1969 study published in the bulletin of the World Health Organization—volume 41, pages 531–535—concluded that—

> Optimally constituted influenza vaccines at standard dosage level have little if any effectiveness and that even larger doses of vaccine do not approach the high degrees of effectiveness that have been achieved with other virus vaccines.

The current recommendation by the Public Health Service Advisory Committee on Immunization Practices is that only people who are chronically afflicted with certain diseases should receive the vaccine. Indiscriminate distribution of the vaccine is not only unnecessary, but may make matters worse for the small category of persons whom the vaccine could conceivably help. According to the DBS Director, during the influenza epidemic of 1967–68:

> Persons who really didn't need the vaccines were getting them, while persons who did were ignored.

DBS should finally address the problems raised by the influenza vaccine. I am writing to Secretary Richardson to ask specifically that the efficacy of influenza vaccine should be closely examined under the newly announced efficacy program and that alternative methods of preventing influenza be seriously considered. I also look forward to receiving from the Department of Health, Education, and Welfare a copy of the report on DBS Management prepared for the National Institutes of Health by a committee headed by Dr. James Schriver.

VACCINE REGULATION AND CONSUMER PROTECTION

The problems raised by this report, however, have broad implications. The release of this report represents a continuation of efforts of my subcommittee to assure better Federal regulation of foods and drugs. In addition to the investigation of vaccine regulation, my Subcommittee on Executive Reorganization and Government Research, in conjunction with the GAO, is investigating Federal regulation of blood banks and blood products. My subcommittee has worked with the GAO in the preparation of four reports on the Department of Agriculture's inspection of meat and poultry. These reports were critical of the Department's performance in assuring wholesome meat to American consumers. Through the subcommittee, I released a GAO study of the Federal Government's regulation of the tuberculosis control drug, isoniazid. That report found that FDA had ignored its own regulations concerning the experimental use of investigational new drugs on human subjects. In 1971, the subcommittee held hearings on chemical additives in our food supply. Witnesses warned about the danger of chemical food additives and residues of drugs such as DES in the food supply. A committee print concerning Federal regulation of chemical food additives will soon be published.

All these investigations and reports have established the need for comprehensive legislation to protect American consumers. Two bills now pending in my subcommittee would have a major effect on the problems we are continuing to discover in our regulatory agencies. One bill is S. 1177, which I am sponsoring, to establish an independent Consumer Protection Agency. This bill would create an advocate for the interests of consumers who would argue on behalf of consumers at all levels of Federal agency activities. If there had been an independent consumer advocate, I doubt that an agency such as DBS could have continued to allow millions of doses of watered influenza vaccine to be released for public use year after year. I do not believe that worthless vaccines would have remained licensed for decades. I doubt that the kind of timid regulation we have discovered at DBS would have for so long gone unnoticed or that filthy conditions would be allowed to prevail year after year in our meat and poultry plants, or that chemicals which add little or nothing to the nutritional quality or safety of food would be allowed to remain in the food supply. An independent consumer advocate would have an enormous impact on the way Federal agencies deal with the interests of consumers. My subcommittee will soon report out S. 1177 and I intend to see that bill become law.

The other piece of legislation is S. 3419, a bill to establish a single independent agency responsible for regulation of product safety, food, and drugs. The proposed Consumer Safety Agency would perform the functions of HEW's present Food and Drug Administration, but would have a wider range of responsibilities and authorities. One such additional responsibility would be the regulation of vaccines currently performed by the DBS. In holding hearings on S. 3419 my subcommittee will review the performance of the DBS and seek to determine whether the Division's regulatory responsibilities would better be handled in conjunction with the Federal Government's regulation of other drugs. In addition, we shall consider whether additional transfers of authority would improve the quality of consumer protection.

The failures cited in the report I am releasing today are major failures in consumer protection. It would be misleading, however, to focus only on these incidents and ignore the larger problems of bureaucratic regulation. These problems are symptoms of a general disorder.

The real problems lie in a regulatory bureaucracy in which authority is apportioned according to irrational distinctions in which different Federal agencies frustrate each other's policies by pursuing conflicting goals; in which questions are decided not on their merits, but in order to preserve or extend an agency's jurisdiction; in which important regulatory authority is buried between layers of bureaucracy, and decisionmakers lose their visibility and public accountability; in which the only day-to-day influence on regulators from outside the Government comes from representatives of the regulated industry; in which agencies with regulatory responsibilities also view themselves as advocates for a particular interest group; in which regulators move back and forth between jobs in Government and execu-

tive positions in regulated industries; in which important decisions are made without input from a variety of affected interests.

All these problems plague our regulatory programs. We have to do better. We cannot solve all the problems of ineffective Federal regulations in one piece of legislation. But we do have a responsibility to begin. S. 1177 and S. 3419 are important first steps in the right direction.

I ask unanimous consent that the list of the 32 vaccines referred to as not effective by the DBS director and their manufacturers be printed in the RECORD together with the GAO's summary of its review and recommendations.

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

VACCINES REFERRED TO AS NOT GENERALLY RECOGNIZED AS EFFECTIVE BY THE DBS DIRECTOR

Product listed in report	Brand name of product listed in report	Manufacturer
1. Product A	Bacterial Vaccine Mixed Respiratory	Hollister-Stier Laboratories.
2. Product B	Respiratory UBA	Eli Lilly & Co.
3. Product C	Staphylococcus-Streptococcus UBA	Do.
4. Product D	Combined Vaccine No. 4 with Catarrhalis.	Do.
5. Product E	Mixed Vaccine No. 4 with H. Influenzae.	Do.
6. Product F	Staphylococcus Vaccine	Do.
7. Product G	Entoral	Do.
8. Product H	Typhoid H. Antigen	Do.
9. Product I	Vacagen Tablets	Merck, Sharp, & Dohme.
10. Product J	Brucellin Antigen	Do.
11. Product K	Staphylo-Strepto Serobacterin Vaccine	Do.
12. Product L	Catarrhalis Serobacterin Vaccine Mixed.	Do.
13. Product M	Sensitized Bacterial Vaccine H. Influenzae Serobacterin Vaccine Mixed.	Do.
14. Product N	Staphage Lysate Type I	Delmont Laboratories, Inc.
15. Product O	Staphage Lysate, Type III	Do.
16. Product P	Staphage Lysate, Types I and III	Do.
17. Product Q	Catarrhalis Combined Vaccine	Merrell-National Laboratories (Division, Richardson Merrell).
18. Product R	Strepto-Staphylo Vatox	Merrell-National Laboratories.
19. Product S	Staphylococcus Toxoid-Vaccine Vatox	Do.
20. Product T	Respiratory Vatox	Do.
21. Product U	Respiratory B.A.C	Hoffman Laboratories, Inc.
22. Product V	Gram-Negative B.A.C	Do.
23. Product W	Pooled Stock B.A.C. No. 1	Do.
24. Product X	Pooled Stock B.A.C. No. 2	Do.
25. Product Y	Staphylococcal B.A.C	Do.
26. Product Z	Pooled Skin B.A.C	Do.
27. Product AA	Mixed Infection Phylacogen	Parke, Davis & Co.
28. Product BB	Immunovac Oral Vaccine	Do.
29. Product CC	Immunovac Respiratory Vaccine (Parenteral).	Do.
30. Product DD	Streptococcus Immunogen Arthritis	Do.
31. Product EE	N. Catarrhalis Vaccine (Combined)	Do.
32. Product FF	N. Catarrhalis Vaccine Immunogen (Combined).	Do.

PROBLEMS INVOLVING THE EFFECTIVENESS OF VACCINES

(Comptroller General's report to the Subcommittee on Executive Reorganization and Government Research)

WHY THE REVIEW WAS MADE

The Chairman of the Subcommittee on Executive Reorganization and Government Research, Senate Committee on Government Operations, asked the General Accounting Office (GAO) to review selected aspects of Federal control over drugs and biological products (vaccines, serums, etc.). This report, the second report to be issued to the Chairman, is concerned with (1) whether legislative authority exists to require biological products to be effective in use and (2) the effectiveness, potency, and use of influenza vaccines.

Background

Pursuant to the Public Health Service Act, biological products must be licensed by the Secretary of the Department of Health, Education, and Welfare (HEW) before they may be transported interstate. To obtain licenses manufacturers must produce products which meet standards of safety, purity, and potency (the ability of products to produce given results). The Division of Biologics Standards (DBS), a division of the National Institutes of Health (NIH), licenses biological products.

FINDINGS AND CONCLUSIONS

Need to remove ineffective products from interstate commerce

Although the Office of the General Counsel of HEW concluded on several occasions that legislative authority existed under the Federal Food, Drug, and Cosmetic Act that could prevent ineffective biological products from being introduced into interstate commerce, DBS disagreed with the Office of the General Counsel. (See p. 11.)

The disagreement apparently was resolved by the Secretary in November 1971. The Secretary stated at that time that DBS, in practice, had been exercising the efficacy authority under the Federal Food, Drug, and Cosmetic Act. Although GAO found no evidence of any ineffective products licensed after 1962, GAO did find the ineffective products licensed prior to 1962 were being marketed. (See p. 13.)

On February 25, 1972, the Secretary took action to require NIH, through an appropriate delegation of authority, to apply the provisions of the Federal Food, Drug, and Cosmetic Act to biological products.

Release of subpotent influenza vaccines

DBS was releasing lots of influenza vaccines even when its tests showed the potency of the vaccines to be as low as 1 percent of the established standards. Of 221 lots released during 1966, 1967, and 1968, 130 failed to meet the standards. (See p. 17.)

Subpotent vaccines were released because agency employees responsible for performing potency tests and for reviewing the results of tests performed by either the manufacturers or DBS did not adhere to the standards. DBS says that its tests are not to be used as a basis for release or rejection of lots but are to be used to determine whether the manufacturers can perform tests and whether the results of their tests can be relied upon. (See p. 17.)

Effectiveness and use of influenza vaccine

Scientific studies disagree significantly as to the specific degree of effectiveness of the vaccines. In addition, in periods of epidemic, there may be a problem with the vaccines' unavailability to persons in high-risk groups for whom the vaccines are needed, because persons receive the vaccines who do not need them. (See p. 22.)

Several Federal agencies notified their employees of the availability of the vaccines but did not make known the recommendations of the Public Health Service Advisory Committee on Immunization Practices regarding the types of persons that should be inoculated. This committee was established by the Surgeon General to develop recommendations for the use of the principal biological products. (See p. 24.)

RECOMMENDATIONS OR SUGGESTIONS

HEW should:

Require NIH to establish milestones to implement the efficacy provisions of the Federal Food, Drug, and Cosmetic Act.

Monitor NIH's progress in stopping the marketing of biological products determined to be ineffective.

Require DBS to revise its instructions to provide sufficient controls to preclude vaccines from being released if tests by either the manufacturers of DBS show the vaccines to be subpotent.

Fully inform Federal employees of the limitations and merits of receiving influenza virus vaccines and of the annual recommendations of the Public Health Service Advisory Committee on Immunization Practices.

MATTERS FOR CONSIDERATION BY THE SUBCOMMITTEE

The Subcommittee should consider bringing GAO's recommendations to the attention of the Secretary of HEW so that the recommendations may be implemented.

LAXITY IN REGULATION OF VACCINES POINTS UP NEED FOR CONSUMER ADVOCATE

Mr. GRIFFIN. Mr. President, on behalf of the distinguished Senator from Illinois (Mr. PERCY), I ask unanimous consent to have printed in the RECORD a statement by him and an insertion concerning laxity in the regulation of vaccines.

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

STATEMENT OF SENATOR PERCY

I share with the Senator from Connecticut (Mr. Ribicoff) a sense of shock and outrage at the callous disregard for the public health and safety shown by the Division of Biologics Standards (DBS) in the National Institutes of Health in permitting diluted flu vaccines, some ineffective and apparently hazardous according to a General Accounting Office audit, to continue to be sold to an unsuspecting public.

Are human lives so cheaply valued by the very agencies of government we have set up to protect us that this kind of laxity in government will be allowed to persist? We now know, based on the GAO report that indiscriminate approval of influenza vaccine by DBS from 1966–68 subjected Americans to over 60 million doses of what may have been worthless prevention—or worse. Since the side effects of the inoculations—including extreme fever, rash, incapacitating diarrhea and cramps—can be severe, I suspect that for thousands, if not millions, of Americans their attempts to protect themselves from illness were actually more harmful than no protection at all.

There is a real question, based on a substantial body of scientific research, whether influenza vaccine offers any real protection even at full strength. Yet in that three-year interval, DBS failed to turn down a single lot of flu vaccine, even though some con-

tained as little as one percent of the required strength. Of 221 lots released during the period, 130 did not meet standards established by the agency itself.

Subpotent vaccines were released for public consumption apparently because DBS officials performing tests and reviewing manufacturers' test results did not adhere to agency potency standards. Officials explain away their conduct by pointing to agency instructions to the effect that the tests are not to be used as a basis for release or rejection of lots, but instead for determining whether manufacturers can perform tests and whether the results of such tests can be relied upon.

This explanation fails to satisfy me. Why have the standard if the agency is not going to follow it? As a matter of fact, the GAO audit indicates that in many instances the manufacturers' own tests could not be relied upon, yet no subsequent action was taken by DBS. I share the view of the Comptroller General that DBS instructions should be revised to provide that vaccines *not* be released if tests by *either* the manufacturers or DBS show the vaccines to be below the required potency.

But even more important is the bureaucratic haggling that underlies this foulup. Over the years, the General Counsel of HEW has concluded that completely clear legislative authority exists under the Food, Drug and Cosmetic Act to prevent *ineffective* biological products (including vaccines, serum, antitoxins, etc.) from being introduced into interstate commerce. But DBS steadfastly repudiated that view in refusing to prevent the marketing of vaccines proven to be ineffective. The dispute apparently was resolved in November 1971 when Secretary Richardson of HEW said that DBS, in practice, was testing vaccines for efficacy. In fact, while GAO in its report found no evidence of ineffective vaccines licensed after 1962, it did find ineffective products licensed prior to that year which were still being marketed. As of February 25, 1972, Secretary Richardson has moved to correct this situation by applying the provisions of the Food, Drug, and Cosmetic Act to all biological products.

The DBS blunder reminds us anew that the American public has been deceived into believing that because an agency of the Federal Government has been set up to afford protection, the public is indeed being protected. But the tragic truth is that just is not so. We have here, instead, a false panacea, and so, a false hope.

But there is a lesson to be drawn. And that is that no more infusion of greater funds or resources or staff will correct the errors of an agency as misdirected as DBS. More than ever, the need is clear for an independent consumer advocacy agency—such as that contemplated in S. 1177 of which I am a principal cosponsor—to look out particularly for public health and safety in the face of bureaucratic lassitude, unconcern, neglect, or perversion of purpose. An advocate for the consumer interest would promptly have become apprised of the existence of millions of subpotent dosages of vaccine and sought a turnaround of policy. Failing in that, an advocate would have assumed responsibility, as DBS did not, for properly informing the public of the lack of protection afforded to it.

As ranking minority member of the Government Operations Committee, which is currently considering the independent Consumer Protection Agency bill, I am convinced that such an agency will reflect a greater sensitivity to the imperative need of the American consumer to have his interests fairly, effectively and responsibly represented, I will make every effort to see that this legislation is promptly reported to the floor of the Senate and quickly enacted so that we can prevent recurrences of the kind I have described today.

COMPTROLLER GENERAL'S REPORT TO THE SUBCOMMITTEE ON EXECUTIVE REORGANIZATION AND GOVERNMENT RESEARCH COMMITTEE ON GOVERNMENT OPERATIONS U.S. SENATE

(Problems Involving the Effectiveness of Vaccines—National Institutes of Health Department of Health, Education, and Welfare B–164031(2))

WHY THE REVIEW WAS MADE

The Chairman of the Subcommittee on Executive Reorganization and Government Research, Senate Committee on Government Operations, asked the General Accounting Office (GAO) to review selected aspects of Federal control over drugs and biological products (vaccines, serums, etc.). This report, the second report to be issued to the Chairman, is concerned with (1) whether legislative authority exists to require biological products to be effective in use and (2) the effectiveness, potency, and use of influenza vaccines.

Background

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FINDINGS AND CONCLUSIONS

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Although the Office of the General Counsel of HEW concluded on several occasions that legislative authority existed under the Federal Food, Drug, and Cosmetic Act that could prevent ineffective biological products from being introduced into interstate commerce, DBS disagreed with the Office of the General Counsel. (See p. 11.)

The disagreement apparently was resolved by the Secretary in November 1971. The Secretary stated at that time that DBS, in practice, had been exercising the efficacy authority under the Federal Food, Drug, and Cosmetic Act. Although GAO found no evidence of any ineffective products licensed after 1962, GAO did find that ineffective products licensed prior to 1962 were being marketed. (See p. 13.)

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Release of subpotent influenza vaccines

DBS was releasing lots of influenza vaccines even when its tests showed the potency of the vaccines to be as low as 1 percent of the established standards. Of 221 lots released during 1966, 1967, and 1968, 130 failed to meet the standards. (See p. 17.)

Subpotent vaccines were released because agency employees responsible for performing potency tests and for reviewing the results of tests performed by either the manufacturers or DBS did not adhere to the standards. DBS says that its tests are not to be used as a basis for release or rejection of lots but are to be used to determine whether the manufacturers can perform tests and whether the results of their tests can be relied upon. (See p. 17.)

Effectiveness and use of influenza vaccine

Scientific studies disagree significantly as to the specific degree of effectiveness of the vaccines. In addition, in periods of epidemic, there may be a problem with the vaccines' unavailability to persons in high-risk groups for whom the vaccines are needed, because persons receive the vaccines who do not need them. (See p. 22.)

Several Federal agencies notified their employees of the availability of the vaccines but did not make known the recommendations of the Public Health Service Advisory Committee on Immunization Practices regarding the types of persons that should be inoculated. This committee was established by the Surgeon General to develop recommendations for the use of the principal biological products. (See p. 24.)

RECOMMENDATIONS OR SUGGESTIONS

HEW should:

Require NIH to establish milestones to implement the efficacy provisions of the Federal Food, Drug, and Cosmetic Act.

Monitor NIH's progress in stopping the marketing of biological products determined to be ineffective.

Require DBS to revise its instructions to provide sufficient controls to preclude vaccines from being released if tests by either the manufacturers or DBS show the vaccines to be subpotent.

Fully inform Federal employees of the limitations and merits of receiving influenza virus vaccines and of the annual recommendations of the Public Health Service Advisory Committee on Immunization Practices.

MATTERS FOR CONSIDERATION BY THE SUBCOMMITTEE

The Subcommittee should consider bringing GAO's recommendations to the attention of the Secretary of HEW so that the recommendations may be implemented.

CHAPTER 1—INTRODUCTION

On June 28, 1971, the Chairman of the Subcommittee on Executive Reorganization and Government Research, Committee on Government Operations, United States Senate, requested that we review selected activities of the Food and Drug Administration (FDA) and of the Division of Biologics Standards of the National Institutes of Health, Department of Health, Education, and Welfare. (See app. I.) To comply with the Chairman's request, we agreed to issue three separate reports. The first was issued on October 7, 1971, entitled "Answers to Questions on the Investigational Use of Isoniazid—a Tuberculosis Control Drug."

This report is concerned with (1) whether legislative authority exists to require biological products to be effective in use and (2) the effectiveness, potency, and general use of influenza virus vaccines. We plan to issue a third report on DBS's regulation of adenovirus, influenza, and pertussis vaccines.

HEW'S RESPONSIBILITIES FOR THE REGULATION OF BIOLOGICAL PRODUCTS AND DRUGS

The Secreatry of HEW is responsible for the regulation of biological products and drugs through two statutes—section 351 of the Public Health Service Act, as amended (42 U.S.C. 262), and the Federal Food, Drug, and Cosmetic Act of 1938, as amended (21 U.S.C. 301).

Biologics

Section 351 of the Public Health Service Act provides that all biological products [1] and their manufacturers be licensed by the Secretary of HEW before the products can be sold in the District of Columbia or transported interstate. Before the products can be licensed, they must meet standards designed to ensure their continued safety, purity, and

[1] A "biological product" is defined under the Public Health Service Act as "any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analagous product, or arsphenamine or its derivatives (or any other trivalent organic aresnic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man."

potency. The Secretary is authorized to inspect the licensed establishments, as well as any establishments being considered for licensing, to ensure that they conform to the legislation and regulations applicable to the manufacture of biological products. As of May 1971, 263 biological products were licensed and 235 establishments were licensed to manufacture such products.

The responsibility for administering section 351 as been delegated by the Secretary to the Director of NIH. DBS, a division of NIH, is the organizational entity which carries out this responsibility. DBS was appropriated $8.8 million for fiscal year 1971.

The Code of Federal Regulations (42 CFR 73) states that a licensed product may not be released by a manufacturer for sale until the manufacturer has completed tests to determine that the product conforms to the standards applicable to its safety, purity, and potency.

"Safety" is defined in the regulations as the relative freedom from harmful effects to recipients. Closely allied to safety is the requirement for "purity"—the relative freedom from extraneous matter in the finished product. "Potency" is defined as the ability of the product to effect a given result, as indicated by laboratory tests or by adequately controlled clinical data obtained through the administration of the product in the manner intended.

DBS may require a manufacturer to submit, prior to the release of a product to the public, samples of production lots and the related protocols which present the results of the manufacturer's tests. When protocols are required, DBS reviews them and may conduct a series of tests within its own laboratories to verify the results shown. DBS then may either release a lot or reject it when necessary to ensure the safety, purity, or potency of the product.

In 1964 the Surgeon General established the Public Health Service Advisory Committee on Immunization Practices—composed of persons from the fields of public health, medicine, and research—to develop recommendations for the use of the principal biological products in the United States.

Drugs

The Secretary of HEW has delegated his responsibility for administering the Federal Food, Drug, and Cosmetic Act of 1938 to FDA.

Under the provisions of this act, a "drug" is defined as:

"(A) articles recognized in the official United States Pharmacopeia, official Hemeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in clause (A), (B), or (C); but does not include devices or their components, parts, or accessories."

Section 505(a) of the act requires, among other things, that a manufacturer of new drugs or any other person seeking to distribute drugs file an application—showing that the drug is safe and effective—with FDA and obtain its approval before the products may be introduced into interstate commerce. Section 505(b) requires that FDA approve the drug for both safety and efficacy.

Influenza

Influenza is an infectious disease, lasting from a few days to 2 weeks, which affects the respiratory systems of persons. There are two primary types of influenza—types A and B—each of which has a number of strains. Strains are the different influenza organisms which have been isolated and identified as causing influenza infection. Influenza virus vaccines are biological products designed to combat the particular strain or strains causing the disease.

The first license for the manufacture and use of influenza virus vaccine was issued in 1945. As of December 1971, eight establishments were licensed to manufacture the vaccine and six actually were engaged in producing and marketing the vaccines. From 1966 through 1970 about 112 million doses of the vaccines were distributed in the United States.

Potency standards for influenza virus vaccines

DBS issues annual potency standards to the manufacturers of influenza virus vaccines. For 1966 the standards required that a manufacturer's product be at least equal to the strength of a DBS reference vaccine, except for one strain which had to be five times the strength of the reference vaccine. The reference vaccine is a standardized vaccine sent to the manufacturers by DBS to be used as a basis for comparison with manufacturers' products.

In 1967 a manufacture's vaccine was required to be at least equal to the potency of the reference vaccine. Standards for 1968 required that the potency of all strain components of the vaccine, except one, be equal to or greater than the potency of the reference vaccine. The one exception was for a strain to combat a 1968 epidemic; DBS required that the potency of this strain be at least 75 percent of the reference vaccine.

The standards established by DBS for 1969, 1970, and 1971 required that a manufacturer's product be at least 75, 80, and 85 percent as potent, respectively, as the reference vaccine to be satisfactory for release.

DBS requires that protocols and a sample of a manufacturer's vaccine be submitted to it for review and approval before the vaccine is released to the public.

Tests to determine potency

To determine whether the individual lots of manufacturers' vaccines meet the established potency standards, DBS requires the manufacturers to perform certain laboratory tests on the lots. DBS performs similar tests in its laboratories for selected lots.

During 1966, 1967, and 1968, DBS required the manufacturers to determine the potency of their vaccines by means of mouse potency tests, which involved inoculating one group of mice with the manufacturers' vaccines and another group with the DBS reference vaccine. After inoculation, each group of mice was injected with the influenza virus and the protective ability afforded by each vaccine was compared.

Late in 1968 DBS changed the required test to the chicken cell agglutination (CCA) test, which determined virus concentration by measuring the ability of the virus to clump red blood cells. This ability is proportional to the number of virus particles. The test is performed on both the manufacturers' vaccines and the DBS reference vaccine, and the results are compared to determine whether the manufacturers' vaccines achieve the potency standard established by DBS.

Instructions relating to release of influenza virus vaccines

DBS instructions relating to the release of vaccines are contained in a Viral and Rickettsial Control Test Check List, dated November 1965, which stipulates that final release action is to be based on the recommendations of the responsible DBS test operators in each laboratory performing vaccine testing. The information required for release is (1) the approval of the manufacturer's test results for compliance with the regulations and requirements and (2) the results of DBS confirming tests, if performed.

Other vaccine release instructions are contained in a 1962 DBS memorandum on influenza potency testing. This memorandum states that the release of influenza virus vaccines is to be based on the data submitted by the manufacturers and is not to be based on any tests performed by DBS. The memorandum states also that DBS potency tests are not intended to provide data for either release or rejection of a lot but are to have as their objective "the establishment of demonstrated reproducibility of technical procedures employed by the manufacturer and DBS."

In 1971 DBS clarified the contents of the 1962 memorandum by stating that it released lots on the basis of satisfactory information furnished by the manufacturers and that tests performed by DBS were a mechanism for being sure that the manufacturers could perform tests and that the results of the tests could be relied upon.

CHAPTER 2—NEED FOR ACTION TO REMOVE INEFFECTIVE BIOLOGICAL PRODUCTS FROM INTERSTATE COMMERCE

We believe that there is a need for DBS to (1) require that biological products be effective prior to licensing and (2) take action to remove from interstate commerce those licensed products that are not effective.

We found that 75, or about 28 percent, of the 263 biological products licensed by DBS generally were not recognized—according to the Director of DBS—as being effective by most of the medical profession. All 75 of the products were licensed by DBS prior to the 1962 amendment to the Federal Food, Drug, and Cosmetic Act discussed on page 12.

DBS has not required biological products to be effective as a condition of licensing and has not removed ineffective products from interstate commerce, because it did not believe that legislative authority existed for such actions.

HEW's Office of the General Counsel has expressed its opinion to DBS on several occasions that the Federal Food, Drug, and Cosmetic Act provides authority to require that licensed biologics be effective. DBS, however, has disagreed with the opinion of the Office of the General Counsel and believes that legislation is needed to require biological products to be effective.

As a result of the interest in the efficacy of biological products expressed by the Chairman of the Subcommittee on Executive Reorganization and Government Research of the Senate Committee on Government Operations, the Secretary of HEW advised the Chairman, on November 29, 1971, that legislation requiring biologics to be effective was not needed because sufficient authority existed under the Federal Food, Drug, and Cosmetic Act and that, in practice, DBS had been exercising such authority.

Although the Secretary apparently has resolved the disagreement between the Office of the General Counsel and DBS regarding the authority to require biologics to be effective, it is our opinion that DBS has not been fully exercising this authority.

APPLICABILITY OF EFFICACY PROVISIONS OF FEDERAL FOOD, DRUG, AND COSMETICS ACT TO BIOLOGICAL PRODUCTS

The Federal Food, Drug, and Cosmetic Act requires that the Secretary approve a drug for safety and efficacy before it may be introduced into interstate commerce. The requirement for efficacy was added to the act by an amendment dated October 10, 1962 (76 Stat. 781), and was to be applied to (1) all drugs approved subsequent to October 10, 1962, and (2) any drugs approved during the period June 25, 1938, to October 10, 1962, which generally were not recognized by scientific experts to be effective in use.

According to the Office of the General Counsel, drugs as defined in the act, include biological products and the authority to require biological products to be effective as a condition of licensing can be delegated to NIH by the Secretary.

DBS did not agree with the opinion of the Office of the General Counsel that a delegation of authority from the Secretary would be satisfactory and, from 1964, recommended to the Department that legislation be proposed to the Congress that would require biologics to be effective in use.

On February 28, 1969, for example, the Office of the General Counsel advised the Director of DBS that the Secretary could delegate to NIH the authority to administer, apply, and enforce the efficacy provision of the Federal Food, Drug, and Cosmetic Act with respect to all drugs which are biological products. This authority included (1) refusing to approve an application for the introduction of a drug into interstate commerce if the drug was not effective for use and (2) withdrawing a previous drug approval if the drug was discovered to be not effective in use.

On July 30, 1969, the Director of DBS advised the Director of the Office of Legislation Analyss, NIH, that he disagreed with the opinion of the Office of the General Counsel. He said that, although it might be possible to require that future biological products be effective, he did not believe that it was possible to require products already licensed to meet current concepts of efficacy. Regarding the delegation of the authority of the Federal Food, Drug, and Cosmetic Act, the Director of DBS stated that:

"In view of the continuing undercurrent recommending the combining of the DBS with Food and Drug, we are quite reluctant to request such a delegation since it would offer an excellent opportunity of such proponents to renew their effort in creating one control agency."

Because the Chairman of the Subcommittee on Executive Reorganization and Government Research, Senate Committee on Government Operations, expressed interest in HEW's authority to require biological products to be effective in use, the Secretary requested the views of the Office of the General Counsel.

In a memorandum dated November 23, 1971, the General Counsel concluded that from 1962 HEW had the authority to require that biological products be effective in use but that the authority had not been delegated to DBS. The General Counsel stated that from 1962 DBS did not license any products which were not effective and that DBS therefore acted substantially as though it did have the authority to require that biological products be effective. The General Counsel recommended that the Department delegate to DBS the authority to continue this informal practice.

The General Counsel also advised the Secretary that he was working out the details for the delegation of authority to the Director of NIH. On February 25, 1972, the delegation of authority was effected.

On November 29, 1971, the Secretary forwarded the General Counsel's opinion to the Chairman and stated that sufficient regulatory authority existed under the Federal Food, Drug, and Cosmetic Act to require biologics to be effective and that, in practice, DBS had been exercising such authority.

PRODUCTS NOT GENERALLY RECOGNIZED AS BEING EFFECTIVE

In a memorandum dated November 19, 1969, to the Office of Legislative Analysis, NIH, the Director of DBS stated that there were several biological products which had been licensed for many years but which had been considered as not effective in use by most of the medical profession.

DBS officials provided us with a list of the products referred to by the Director of DBS. The list showed that there were 75 licensed biological products—about 28 percent of the 263 licensed biological products—which generally were recognized as not being effective in use. Because some of the licensed products are produced by more than one manufacturer, a total of 132 licenses—42 of which were issued between June 1938 and October 1962—have been issued for production of the 75 products. According to DBS these licenses are for biological organisms which may be sold to the public individually or combined with other organisms.

DBS provided us also with a list of vaccines being sold to the public that contain one or more of the 75 licensed organisms generally recognized to be not effective in use. The list (see app. II) showed that, as of December 31, 1971, there were 32 such vaccines. Of these 32 vaccines, 16 contained organisms which were licensed after 1938. We noted, however, that one of the 32 vaccines contained a biological organism which was not on the list of 75 organisms supplied to us by DBS.

We noted also that the package circulars for the ineffective vaccines indicated that persons might suffer adverse reactions from the use of the vaccines. For example, one of the vaccines—sold for the treatment of recurrent and chronic bacterial upper respiratory infections, infectious asthma, bronchitis, sinusitis, and throat infections—is made up of six ineffective organisms which were licensed by DBS in 1956. The package circular, which accompanies the sale of this vaccine, states that, although significant side effects from the vaccine are uncommon, there have been reports of children who have developed systemic reactions—consisting of fever, rash, abdominal cramps, and diarrhea—4 to 8 hours after injection.

The package circular for another of the ineffective vaccines—intended for the treatment of infections and inflammations of the eye by creating a fever in the patient—states that:

"The febrile reaction following intravenously administered * * * [vaccine] usually occurs in four to eight hours and in most cases is not preceded by a chill. The temperature may rise to 101° F. or even 104° F. Fever subsidies in a few hours, and the patient is left with muscular pains. Chilly sensations and malaise may be expected. * * * The patient should be kept under close observation through the period of increased temperature, and if excessive fever occurs, it should be combated vigorously."

CONCLUSIONS

Although the Office of the General Counsel concluded on several occasions that legislative authority existed that could prevent ineffective biological products from being introduced into interstate commerce, DBS disagreed with the conclusion of the Office of the General Counsel.

The disagreement apparently was resolved by the Secretary in November 1971. The Secretary stated at that time that DBS, in practice, had been exercising the efficacy authority contained in the Federal Food, Drug, and Cosmetic Act. Although we found no evidence of any ineffective products licensed after 1962, ineffective biological products licensed prior to 1962 are being marketed.

We noted that the Secretary took action to require NIH, through an appropriate delegation of authority, to aply the provisions of the Federal Food, Drug, and Cosmetic Act to biological products. We believe, however, that, having made this determination, the Secretary also should (1) require NIH to establish milestones to implement this authority and (2) monitor NIH's progress in stopping the marketing of ineffective biological products.

RECOMMENDATIONS TO THE SECRETARY OF HEW

We recommend that, to stop the marketing of ineffective biological products, HEW (1) require NIH to establish milestones to implement the efficacy provisions of the Federal Food, Drug, and Cosmetic Act and (2) monitor NIH's progress in stopping the marketing of biological products determined to be ineffective.

CHAPTER 3—RELEASE OF SUBPOTENT INFLUENZA VIRUS VACCINES

Manufacturers' test results showed that 115 of 221 lots of influenza virus vaccines released by DBS during 1966, 1967, and 1968 failed to meet potency standards established by DBS. In addition, 15 other lots which were released and shown to be potent by the manufacturers' tests were found to be subpotent on the basis of DBS tests. We found no indications that subpotent vaccines were released in 1969 or 1970. Only one subpotent lot, however, was submitted by manufacturers during this period.

It appears that subpotent vaccines were released because DBS employees responsible for performing potency tests and for reviewing the results of tests performed by either the manufacturers or DBS did not adhere to potency standards established by DBS.

DBS instructions state that its tests are not to be used as a basis for release or rejection of lots but are to be used to determine whether the manufacturers can perform tests and whether the results of their tests can be relied upon. We believe that the instructions should be revised to provide that vaccines *not* be released if tests by either the manufacturers or DBS show the vaccines to be subpotent.

NEED TO REVISE INSTRUCTIONS

DBS instructions state that final release actions for lots of influenza virus vaccines are to be based on the recommendations of responsible operators in the DBS laboratories which review the manufacturers' test results. The instructions state also, among other things, that the laboratory operators must record any lot which fails to meet the potency standards.

We found, however, that, for lots released on the basis of manufacturers' tests, DBS laboratory operators indicated the failure to meet DBS potency standards for only 25 of the 115 subpotent lots during 1966, 1967, and 1968. In addition, DBS records contained information explaining the release of 35 subpotent lots, which, in our opinion, was questionable; we found no documentation explaining the release of the other lots.

For example, 11 lots were released on the basis of the manufacturers' certifications to the Director of DBS that the vaccines had been manufactured in compliance with the formula issued by DBS. Also another lot was released by the Assistant Director of DBS even though the DBS laboratory operator had noted that the potency of a particular strain was unsatisfactory. The DBS laboratory operator had recommended that this lot be rejected because, according to the manufacturer's tests, one of the component strains was only 45 percent as potent as the reference vaccine.

The Assistant Director released this lot because, in his opinion, it met the minimum potency requirements set forth in section 4.25 of the instructions sent to the manufacturers by DBS. Section 4.25 states that the tests performed by manufacturers must be based on comparisons of their vaccines with the reference vaccine of DBS and that the results of the potency tests must show that the manufacturers' vaccines are at least equal to the reference vaccine.

We found that the DBS laboratory operators recorded as satisfactory 82 of the 115 lots that had potency values which were less than the DBS standards.

For example, one lot released by DBS on January 18, 1966, was designed to combat six strains of influenza. The manufacturer's test showed that one of the six strains was only 19 percent as potent as the reference vaccine and that the other five strains were at least equal to the reference vaccine.

DBS tested the potency of five of the six strains and found the potency of the strain

noted as 19 percent on the manufacturer's tests to be greater than 300 percent of the reference. These same DBS tests indicated, however, that three of the four remaining strains had potency values below 20 percent of the reference vaccine and that the fourth strain had a potency value of approximately 50 percent of the reference vaccine. The laboratory operator recorded that the potency of this lot was satisfactory on the basis of the DBS test, and the lot was released.

In connection with the release of subpotent lots, we have noted that DBS instructions state that DBS tests are not to be used as a basis for release or rejection of lots but are to be used to determine whether the manufacturers can perform tests and whether the results of their tests can be relied upon.

Variability of test results

DBS tested 78 of 221 lots of vaccines released during 1966, 1967, and 1968. We found that 41 of these lots met the DBS potency standards and that 34 of the 41 were shown to be potent by the manufacturers' tests. The remaining 37 lots tested by DBS did not meet its potency standards. According to the manufacturers' test results, 22 of these lots were subpotent and 15 were potent. We found also that DBS test results varied significantly from the test results of the manufacturers.

For example, a manufacturer's tests for a lot released by DBS on September 13, 1967, showed potent strain values of 100 percent, 171 percent, and 149 percent whereas the DBS tests on the same lot showed subpotent values of 0.8 percent, 15 percent, and 12 percent, respectively.

This lot was released with a notation that potency was satisfactory on the basis of the manufacturer's tests even though (1) the potency standard at that time required these strains to be at least equal to the reference vaccine and (2) the DBS test results differed significantly from those of the manufacturer.

Reliability of mouse potency test

The laboratory chief responsible for potency testing since 1967 advised us that, due to problems with the variability of the results of the mouse potency tests, DBS did not strictly apply its potency standards during 1967 and 1968.

The laboratory chief advised us also that the mouse potency test was considered unreliable, and he furnished us with a 1969 report prepared by officials of DBS that questioned the reliability of the mouse potency test. The report concluded that the CCA test, which was adopted by DBS late in 1968, was a more reliable means for measuring potency. The laboratory chief advised us, however, that he also used the CCA test—at times subsequent to release—to determine the potency of selected influenza vaccine lots, including 55 subpotent lots submitted by the manufacturers during 1966, 1967, and 1968. The results of the CCA tests showed that 48 of the 55 lots still failed to meet the potency standards established by DBS.

The laboratory chief furnished us also with a memorandum dated July 12, 1968, in which he advised the Director of DBS that, with the exception of one manufacturer, the first lots submitted during 1968 showed that nothing was being done to increase the potency of the vaccines. The laboratory chief said in the memorandum that "it would be sad if we allow the manufacturers to make and sell poor influenza vaccines for another season."

CONCLUSIONS

We believe that, because of the significance of the ability of biological products—including vaccines—to effect a given result, it is important that DBS develop standards for the products that are designed to protect the consumer and strictly enforce such standards. We found, however, that DBS was releasing lots of influenza virus vaccines during 1966, 1967 and 1968, even when its tests showed the potency of the vaccines to be as low as 1 percent of the established standards. There were no indications that subpotent vaccines were released in 1969 or 1970. Only one subpotent lot, however, was submitted during this period.

It appears that subpotent vaccines were released because DBS employees responsible for performing potency tests and for reviewing the results of tests performed by either the manufacturers or DBS did not adhere to potency standards established by DBS.

A DBS instruction states that DBS potency tests are not to be used as a basis for release or rejection of lots but are to be used to determine whether the manufacturers can perform tests and whether the results of their tests can be relied upon. We believe that this instruction should be revised to provide that a vaccine *not* be released if tests by either the manufacturer or DBS show the vaccine to be subpotent.

RECOMMENDATION TO THE SECRETARY OF HEW

We recommend that HEW require DBS to revise its instructions to provide sufficient controls to preclude vaccines from being released if tests by either the manufacturers or DBS show the vaccines to be subpotent.

CHAPTER 4—PROBLEMS IDENTIFIED WITH EFFICACY AND GENERAL USE OF INFLUENZA VIRSUS VACCINES

We found that the conclusions of scientific studies disagreed significantly as to the specific degree of effectiveness of the influenza virus vaccines. We found also that a number of Federal agencies—in connection with inhouse influenza inoculation programs—had notified their employees of the availability of the vaccines but had not made known the recommendations of the Public Health Service Advisory Committee on Immunization Practices regarding the types of persons that should be inoculated.

EFFICACY OF INFLUENZA VIRUS VACCINES

Information on the effectiveness of influenza virus vaccines is conflicting. DBS officials estimated that influenza virus vaccines were 50 to 60 percent effective, and they provided us with several studies concerning the efficacy of the vaccines. One of the studies, performed by researchers at Mount Sinai School of Medicine, City University of New York, and at the California State Department of Public Health showed that, at one military base, influenza vaccines were 73 percent effective in reducing the number of trainees hospitalized in 1970.

Other reports, however, indicated a lesser degree of effectiveness. For example, a report published in 1964 by officials of the HEW National Communicable Disease Center [1]— which is responsible for coordinating and evaluating a national program for the prevention and control of communicable diseases, such as influenza—stated that 42 million doses of vaccines were distributed in 1962 and that, on the basis of a limited number of studies and preliminary reports, it was believed that the efficacy of the vaccines was 20 to 25 percent at best.

The report concluded that widespread use of influenza vaccines for general population groups could not be justified but that high-risk groups should continue to use the vaccines annually. High-risk groups, at that time were defined as pregnant women, the chronically ill, and older persons.

Another report published in 1969 by officials of the National Communicable Disease Center stated that the results of studies indicated that influenza vaccines at standard dosage levels had little, if any, effectiveness and that even very large doses of the vaccnies did not approach the high degrees of effectiveness which had been achieved with other virus vaccines. The report concluded that attention should be directed toward finding a more effective means of protection against influenza.

A study, published in 1969, of the effectiveness of influenza virus vaccinces by officials of the University of Wisconsin Medical School and of the National Communicable Disease Center concluded that inoculation clearly appeared to have no protective or modifying effect on the incidence of illness.

The Director of DBS, in a report published in 1969, also questioned whether the use of influenza virus vaccines had any detectable effect on the influenza epidemics which occurred in 1957 and 1968. The Director pointed out that in August 1968 virologists generally agreed that a significant change had occurred in one particular virus strain and that an epidemic was clearly predictable because available vaccines would provide only limited, if any, protection.

Although all the vaccines which were manufactured to combat the 1968 epidemic were not used, the Director stated that one of the problems in the face of any epidemic was the availability of the vaccines. He stated also that persons who really did not need vaccines received them while others in high-risk groups did not receive them.

Recommendations of the Public Health Service Advisory Committee

The Public Health Service Advisory Committee on Immunization Practices made the following recommendation with regard to the use of influenza virus vaccines during the 1971–72 influenza season.

"Annual vaccination is recommended for persons who have chronic debilitating conditions: 1) congenital and rheumatic heart disease, especially mitral stenosis; 2) cardiovascular disorders, such as arteriosclerotic and hypertensive heart disease, particularly with evidence of cardiac insufficiency; 3) chronic pulmonary diseases, such as asthma, chronic bronchitis, cystic fibrosis, bronchiectasis, emphysema, and advanced tuberculosis; 4) diabetes mellitus and other chronic metabolic disorders."

The committee also stated that:

"Although the value of routinely immunizing all older age persons is less clear, those patients who have incipient or potentially chronic disease, particularly affecting cardiovascular and bronchopulmonary systems, should also be considered for annual immunization."

The committee did not recommend the vaccines for healthy adults and children.

The committee stated that control of epidemic influenza in the general population was not possible through routine vaccinations because influenza vaccines had been variably effective and had offered rather brief periods of protection.

Use of vaccines in Federal agencies

We examined into programs of influenza inoculation at selected Federal agencies to determine their compliance with the recommendations of the Public Health Service Advisory Committee on Immunization Practices. We undertook this examination of the conflicting information on the relative effectiveness of the vaccines and because of the problems with their availability, cited by the Director of DBS, which could be caused by not following the recommendations of the advisory committee.

Under the United States Code (5 U.S.C. 7901), health units of Federal agencies are operated either by the agencies or by a division of the Health Service and Mental Health Administration, HEW.

[1] Effective June 24, 1970, the National Communicable Disease Center became known as the Center for Disease Control.

We selected eight Federal agencies in the Washington area that operated their own health units, to determine whether they had followed the advisory committee recommendations for the 1970–71 influenza season. The recommendations for the 1970–71 season were the same as those for the 1971–72 season.

The Health Service and Mental Health Administration had furnished the medical officers in charge of its health units with a copy of the advisory committee's recommendations and had advised them not to conduct mass influenza immunizations but to make the vaccines available on a request basis only. We noted that about 14 percent of the 140,000 employees served by the health units of the Health Service and Mental Health Administration received the influenza virus vaccines during the 1970–71 influenza season.

Our examination into the eight agencies which operated their own health units showed that (1) the specific recommendations of the advisory committee had not been made known to the employees in most cases and (2) a larger percentage of employees usually received the vaccines than did employees at agencies having health units operated by the Health Service and Mental Health Administration.

The information summarized below is from notices given to the employees of the eight agencies. Also shown for the eight agencies are the number and percentage of employees who received the influenza virus vaccines during the 1970–71 influenza season.

Department or agency	Recommendation to employees	Employees receiving vaccines	
		Number	Percent
National Aeronautics and Space Administration	Informed employees of vaccines' availability, and through other literature promoted inoculation	1,000	46
Federal Aviation Administration	Urged for all employees interested in this program of preventive medicine	1,407	40
Social Security Administration	Stated that the need for inoculation was a must for everyone having chronic diseases, those over 45 years of age, and pregnant women.	5,000	33
Civil Service Commission	Urged all employees to take advantage of the immunization program, particularly persons having chronic diseases, persons over 65 years of age, pregnant women, and persons responsible for care of the sick.	778	32
U.S. Army, Civilian Employees' Health Service	Stated that the vaccines were not recommended for healthy adults and children but were recommended for persons having chronic debilitating diseases and persons over 45 years of age having incipient or potential chronic diseases.	15,142	26
Department of Agriculture	Advised employees that vaccines would be available to all and stated that persons over 45 years of age and persons having chronic illnesses had the greatest need.	3,395	24
Postal Service	Informed employees only of vaccines' availability	500	24
Congress of the United States	Notice to employees was identical to the advisory committee recommendations	3,814	13

CONCLUSIONS

Our review of scientific studies indicated that the specific degree of effectiveness of influenza virus vaccines was questionable. In addition, in periods of epidemic, there may be a problem with the vaccines' unavailability to persons in high-risk groups for whom the vaccines are needed because, according to the Director of DBS, persons receive the vaccines who do not need them.

We found that several Federal agencies had notified their employees of the availability of the vaccines but had not made known the recommendations of the advisory committee regarding the types of persons that should be inoculated.

Considering the advisory committee's statement that control of epidemic influenza in the general population is not possible through routine vaccinations, we believe that action should be taken by the Secretary to fully inform Federal employees of the limitations and merits of receiving the vaccines and of the annual recommendations of the advisory committee.

RECOMMENDATION TO THE SECRETARY OF HEW

We recommend that HEW fully inform Federal employees of the limitations and merits of receiving influenza virus vaccines and of the annual recommendations of the Public Health Service Advisory Committee on Immunization Practices.

CHAPTER 5—SCOPE OF REVIEW

Our review included interviews with DBS officials and an examination into (1) legislation and congressional hearings applicable to the regulation of biological products, (2) the manufacturers' protocols, DBS test results, DBS instructions, and DBS correspondence with manufacturers that related to the potency of influenza virus vaccines released for sale from 1966 to 1970, and (3) the recommendations of the Public Health Service regarding the use of the influenza virus vaccines. We also interviewed officials of selected agencies concerning their programs for the inoculation of Government employees against influenza.

Our review was made primarily at the offices of DBS in Bethesda, Maryland.

APPENDIX I

U.S. SENATE,
COMMITTEE ON GOVERNMENT RELATIONS,
Washington, D.C., June 28, 1971.

Hon. ELMER B. STAATS,
Comptroller General of the United States, General Accounting Office Building, Washington, D.C.

DEAR ELMER: The Public Health Service Act authorizes the Division of Biologics Standards of the National Institute of Health to administer the regulation of biologic products. In the performance of this important function the Division must establish and maintain a high level of testing and inspection of production facilities for biologics produced for sale and shipment in interstate commerce. In addition, the Division has the power to take appropriate action to enforce restrictions on interstate shipments on unlicensed or mislabeled products.

During the past month, members of the staff of the Subcommittee on Executive Reorganization and Government Research and representatives of your office have discussed the regulatory activities of the Division. On the basis of these discussions and other Subcommittee information, it is clear that a review by your office of the regulatory responsibilities of the Division, particularly its activities involving influenza, adenovirus, combined influenza-adenovirus and pertussis vaccines is badly needed.

I therefore request that the General Accounting Office undertake such a study immediately and submit a full report to this Subcommittee at the earliest date possible.

In addition, I have attached a list of questions concerning the Isoniazid TB control drug and the Federal Government's procedures for assuring its safe use, I would like a separate report responding to these questions a well.

In view of the present working relationship between our staffs, further details involving this request can be arranged at the staff level.

Sincerely,

ABE RIBICOFF, *Chairman.*

APPENDIX II

INDICATED USES OF BIOLOGIC PRODUCTS THAT ARE NOT GENERALLY RECOGNIZED AS BEING EFFECTIVE IN USE

1. *Product A*—Aids in the desensitization to common bacterial organisms present in the respiratory system.

2. *Product B*—Intended as a means of developing an immunity to pneumococci, streptococci, hemophilus influenza, neisseria catarrhalis, and staphylococci.

3. *Product C*—Intended for treatment of mixed staphylococcus and streptococcus infections.

4 *Product D*—Intended as a means of developing an immunity to neisseria catarrhalis, klebsiella pneumoniae, diplococcus pneumoniae, streptococci, and staphylococci.

5. *Product E*—Intended as a means of developing an immunity to hemophilus influenzae, neisseria catarrhalis, streptococci, klebsiella pneumoniae, staphylococci, and pneumococci.

6. *Product F*—Intended as a means of developing an immunity to staphylococcus infections.

7. *Product G*—May be useful for increasing resistance to bacterial respiratory infections.

8. *Product H*—May be useful for certain infections and inflammations of the eye.

9. *Product I*—used for active immunization against some of the bacteria that cause secondary infections associated with the common cold.

10. *Product J*—Used in the treatment of brucellosis.

11. *Product K*—Intended as a means of developing an immunity to upper respiratory tract infections due to strains of staphylococci and streptococci.

12. *Product L*—Intended as a means of developing an immunity to species of disease-producing bacteria that commonly cause respiratory tract infections.

13. *Product M*—Intended as a means of developing an immunity to disease-producing bacteria commonly associated with respiratory tract infections.

14. *Product N*—Used in the treatment of infections caused by staphylococcus aureus.

15. *Product O*—Used in the treatment of infections caused by staphylococcus aureus.

16. *Product P*—Used in the treatment of infections caused by staphylococcus aureus.

17. *Product Q*—For prevention of bacterial complication of the common cold and for treatment of chronic rhinitis and sinusitis.

18. *Product R*—Aids in the treatment of various forms of rheumatism, arthritis, myositis, fibrositis, chronic neuritis, and neuralgia.

19. *Product S*—Used in the treatment of subacute or chronic staphylococcal infections, such as acne, pustular dermatoses, furuncles, and blepharitis.

20. *Product T*—For prevention of secondary infections associated with respiratory infections.

21. *Product U*—Used in the treatment of recurrent and chronic bacterial upper respiratory infections, infectious asthma, bronchitis, sinusitis, and throat infections.

22. *Product V*—Used in the treatment of recurrent and chronic bacterial upper respiratory infections, infectious asthma, bronchitis, sinusitis, and throat infections.

23. *Product W*—Used in the treatment of recurrent and chronic bacterial upper respiratory infections, infectious asthma, bronchitis, sinusitis, and throat infections.

24. *Product X*—Used in the treatment of recurrent and chronic bacterial upper respiratory infections, infectious asthma, bronchitis, sinusitus, and throat infections.

25. *Product Y*—Used in the treatment of

recurrent and chronic staphylococcal infections of the eyes, ears, and nose.

26. *Product Z*—Used in the treatment of recurrent and chronic staphylococcal infections of the skin.

27. *Product AA*—Aids in the treatment of inflammations produced by streptococci, staphylococci, colibacilli, and pneumococci.

28. *Product BB*—Intended for use when it is desired to attempt prophylaxis against staphylococci, neisseria catarrhalis, hemophilus influenzae, klebsiella pneumoniae, corynebacterium diphtheroides, diplococcus pneumoniae, and streptococci.

29. *Product CC*—Used for immunity and treatment of bacterial infections of the respiratory tract and accessory sinuses that are usually associated with acute colds.

30. *Product DD*—Used in the treatment of acute and chronic rheumatic conditions.

31. *Product EE*—Used for immunity and treatment of catarrhal infections of bacterial origin that involve respiratory passages and accessory sinuses.

32. *Product FF*—Used for immunity and treatment of respiratory infections of bacterial origin.

APPENDIX III

PRINCIPAL OFFICIALS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE RESPONSIBLE FOR THE ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From—	To—
Secretary of Health, Education and Welfare:		
Elliot L. Richardson	June 1970	Present.
Robert H. Finch	January 1969	June 1970.
Wilbur J. Cohen	March 1968	January 1969.
John W. Gardner	August 1965	March 1968.
Assistant Secretary (Health and Scientific Affairs):		
Merlin K. DuVal	July 1971	Present.
Roger O. Egeberg	July 1969	July 1971.
Philip R. Lee	November 1965	February 1969.
Director, National Institutes of Health:		
Robert Q. Marston	September 1968	Present.
James A. Shannon	August 1955	August 1968.
Director, Division of Biologics Standards:		
Roderick Murray	January 1956	Present.

CONSUMER POLICY RESOLUTIONS

Mr. MOSS. Mr. President, almost daily we are confronted with various articles and legislative proposals which try to speak for "the consumer." What is the consumer? Who represents him?

Today the American consumer is an unorganized mass of people, 200 million of them. While no organization can be said to speak for all consumers, there are a number which substantially represent consumer interests in both administrative tribunals and the Halls of Congress.

The Consumer Federation of America is among the foremost consumer organizations operating in the United States today. Made up of a variety of other organizations, the CFA annually sets out policy resolutions which serve as indicators of the consumer's interest and role in American society. I think it would be worthwhile for all of us to review the policy resolutions of the CFA so that we are cognizant of this important voice.

Mr. President, I ask unanimous consent that the policy resolution of the Consumer Federation of America be printed in the RECORD.

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

POLICY RESOLUTIONS OF CONSUMER FEDERATION OF AMERICA, ADOPTED JANUARY 29, 1972

PREAMBLE

We believe the consumer has a responsible role in the American economy. To discharge that responsibility he requires more meaningful information and more effective legislation to promote his interests.

Every American is a consumer. His welfare is closely identified with the public interests. His welfare requires a careful balancing of the right in a free economy to earn profits with other rights that affect decisively the quality of life for everyone.

To achieve this balance requires laws that will establish such conditions as will enable all people—especially those whose needs are least adequately met—to function as efficient, responsible citizens.

Moreover, it requires the adequate funding of programs designed to promote consumer protection and understanding and a new sense of commitment by agencies in fairly and openly promulgating regulations which are sensitive to the realization of the full objectives of consumer legislation. It further requires continued legislative oversight not only by the existing congressional committees but by select committees specially responsible for the promotion of the overall protection of consumers.

If, in the final analysis, effective promotion of the public well-being is to be realized, it is essential that national priorities be reestablished in the direction of returning to a peace-time economy which makes full and productive use of all human resources.

I. WAGE-PRICE CONTROLS

The Administration's wage-price program to stabilize the economy is a failure, resulting in stringent wage increase restrictions while prices and profits increase virtually without restraint.

Under voluntary compliance, corporate employers—backed by the Pay Board—have resisted reasonable increases in employee income. At the same time, corporations—backed by the Price Commission—have pressured for and received innumerable price and profit increases inflating the cost of living. By imposing wage controls on low income families and allowing price increases, the Pay Board has imprisoned consumers in growing economic impoverishment.

Inflation of consumer prices resumed in December, 1971, approaching 5% per year, with few indications for real relief. Unemployment remains above 6% while wages of unorganized workers and many of the organized are effectively held at or below the Pay Board's 5% guideline despite significantly increased productivity. Responsibility for failure of the economic stabilization program is directly attributable to Administration policies and the execution of Phase II.

1. The program fails to recognize that the central problem is self-determined pricing by that 50 or more highly concentrated industries which dominate the economy. Pricing by those industries has largely been unresponsive to the commands of overcapacity and weak consumer demand.

2. The program ignores government-supported devices for maintaining artificially high and noncompetitive prices such as: retail price fixing of whole milk at the state level and politically-fostered increases in price supports of manufacturing milk and other agricultural commodities; state "fair trade" laws and anti-loss leader laws; suppression of price competition legend drugs; production allowances and import quotas for oil.

3. The program wrongfully exempts from control prices charged by large corporate farms owned by agribusiness conglomerates financially able to withstand the vagaries of crop yields and powerful enough to negotiate high prices on crops produced with underpaid migrant labor.

4. Consumers are systematically excluded from the Price Commission's decision-making processes.

5. Base-price postings, reflecting uncertain relationship to actual ceiling prices, prevent consumer influence on retailers to hold down prices.

6. No effort has been made to organize and instruct consumers for a role in the enforcement mechanism.

7. In the one product line—prescription drugs—for which the posting of base prices would have promoted meaningful price competition, the Price Commission reversed its policy, permitting druggists to escape the obligation to post retail prices. Even those druggists with $200,000 or higher volume are allowed to present consumers with an incomprehensible wholesale catalog.

8. The Price Commission has ignored, and gives no indication of any interest in, price increases achieved covertly through reductions in quality or withdrawal from the market of low-priced lines. Resultant degrading of product quality contributes to further inflation, weakens the marketability of US-made products in world trade, and further jeopardizes international trade.

9. By permitting firms to take a normal mark-up on manufacturers' approved price increases, the Price Commission facilitates pyramiding of original increases as wholesalers and retailers add mark-ups. The result is price inflation by the Commission's own hand.

10. By conducting closed-door decisions, the Price Commission hurts its own credibility.

11. The appearance of personnel shifts and public information policies in the Bureau of Labor Statistics, and unresponsiveness to consumer complaints of price rises by the Internal Revenue Service have: undermined public confidence in the Price Commission, the Consumer Price Index, the Wholesale Price Index, employment rates, and in enforcement of price controls.

CFA vigorously renews recommendations made at the President's request, September 21, 1971:

1. On an equal basis with business, labor and government, consumers be guaranteed the right to participate in machinery established for development and implementation of government policy.

2. Inequitable control of wages must be halted.

3. To restore consumer confidence and stimulate spending, ceilings be established on corporate profits and dividends, with surpluses passed on to low and middle income consumers, that segment of society which will and must spend.

4. Effective curbs be placed on corporate profits to eliminate need for wage restraints in those industries that enjoy increased productivity.

5. A meaningful economic program be established which encompasses: (a) federal action to roll back high interest rates; (b) reduction of the cost of basic energy sources; (c) vigorous enforcement of antitrust laws; and (d) use of federal and state regulatory machinery to stem the increase of prices in "regulated" industries. It must be recognized that governmental action or inaction has provided much, if not most, of the stimulus for higher prices in the market place. Federal fiscal policy has resulted in the highest interest rates in this century. Federal energy policy has given the consumer the highest electric, naural gas, oil and coal prices in history.

Ineffective enforcement of antitrust laws has allowed monopoly and oligopoly industry to administer prices, largely unaffected by normal market factors. Weak, ineffective federal and state regulation has allowed inflationary increases in retail utility and transportation rates. In all these areas, the consumer pays higher direct retail costs for

housing, goods and services and higher indirect costs which are passed along to cover higher manufacturing and distribution expenses caused by the same inflationary forces.

6. To be effective and equitable, meaningful and fair enforcement of price ceilings is essential, and machinery must be established to guard against outright violations, substitution of lesser quality materials without corresponding price reduction, withdrawal of lower priced commodities, and other methods of circumvention of the intent of economic restraints. Any program predicated on voluntary adherence is totally unsatisfactory, since the consumer is unable to insure honesty and compliance in the marketplace without affirmative and open disclosure requirements. To this end, the government must also establish and expeditiously publish, meaningful statistical data assigned to assure compliance and highlight violations. Any statistical base must recognize and compensate for the unfortunate fact that the cost of living index has been at an all-time high.

7. Tax policies associated with an economic program must provide for equitable treatment of consumers. Significant tax reductions spread to all consumers, especially those in lower income brackets, would increase consumer spending and create jobs. Unfair, billion-dollar tax advantages to business, whether through investment tax credits or accelerated depreciation schemes such as the Asset Depreciation Range regulations, merely increase corporate profits, deny increased purchasing power to the consumers most likely to spend increased income, and will not succeed in decreasing unemployment in light of present underutilization of plant capacity. Any benefit bestowed on business must be accompanied by an affirmative action program guaranteeing the creation of new job opportunities, particularly for the hard-core unemployed.

II. COMMUNICATIONS

The consumer has the right to choose from a variety of high quality communication services at a reasonable cost. The consumer is likewise dependent upon adequate, fair reporting and broadcasting of news and programming of specific consumer interest.

1. Public broadcasting. A strong, viable public broadcasting system is essential to serve the educational and informational needs of all Americans. This cannot be accomplished effectively without assured long-range financing. Public broadcasting must be able to tackle controversial issues, both by local stations and on a national basis. Accordingly, CFA supports enactment of appropriations for public broadcasting and urges future development of a fair, independent method of financing.

2. Cable television. Recognizing cable television's immense potential to the US television audience:

CATV services should be designed to serve diverse needs, including education, of the communities in which the systems are located.

Non-profit, public ownership of CATV systems should be encouraged. Other forms of ownership should be subject to profit restrictions, to the end that dividends of ownership be returned to the community.

Programming of CATV systems should be done by entities separate from those which own CATV systems.

The Federal Communications Commission should require that CATV service be made available to every geographical area of a community if it is made available to one area.

Service by a cable system should not be denied to any person because of inability to pay.

Public access channels and free studio and production facilities should be available to citizens on a first-come, first-served, nondiscriminatory basis, and certain channels should be allocated for educational use.

CATV systems should be required to install two-way capability for future expansion, with effective safeguards against invasion of privacy.

3. Consumer reporting and programming. CFA commends the growing number of broadcasters and publishers who have significantly increased consumer reporting and broadcasting, including accurate reporting of the activities of consumer organizations. We call on additional news media to establish stronger, more effective consumer programs.

CFA supports those who have withstood economic intimidation, condemns those who have submitted to it, and strongly supports those responsible journalists who are fighting to upgrade fair consumer reporting and programming within their media.

4. Domestic satellites. CFA urges establishment of a common-carrier domestic satellite system to provide for relay of communications signals directly into individual community reception centers. A domestic satellite system must provide free access for public television.

5. The postal service. Rates for all classes of postal service must be fully equitable, to the end that first class postage does not subsidize the sending of third class "junk" mail. CFA urges establishment of US Postal Service Procedures whereby citizens may remove their names from junk mailing lists offering merchandise or services from profit-making organizations as defined by the Postal Service.

6. Broadcast License Renewal. CFA opposes legislation amending the Federal Communications Act to give preference in license renewal proceedings to incumbent holders of broadcast licenses, and supports maximum community involvement in review of a licensee's performance every three years.

7. Broadcast self-regulation. Broadcasting self-regulation through radio and television codes has failed to protect the public from a wide array of misleading and deceptive advertising. Codes should be disassociated from the National Association of Broadcasters and governed by an independent body responsive to the public interests. Confidentiality code proceedings involving deceptive advertising should be abolished.

8. Telephone company regulation. Because of the proliferation of telephone rate increases and concurrent reductions in service, more effective regulation of telephone companies is required. CFA commends state and local governments which have defended ratepayers' interest in regulatory proceedings. CFA urges Congress to make available all necessary funds for a Federal Communications Commission probe of the American Telephone and Telegraph Co. commensurate with the scope of the task and the enormity of the consumer's interest.

9. Media advertising. The public must have access to the broadcast media to present counter arguments when commercial advertising raises controversial issues such as matters of environmental protection or nutritional habits, makes claims based on scientific premises currently subject to debate within the scientific community, or is silent on negative aspects of the advertised project. CFA endorses the comments of the FTC and the National Citizens Committee for Broadcasting filed in the FCC's fairness doctrine inquiry as these comments relate to the public's right of access for the presentation of counter-commercials.

III. CONSUMER EDUCATION

1. CFA supports the principle that each State enact a statute requiring consumer education to be offered in grades Kindergarten through 12. Through its consumer education committee, CFA will provide leadership in fostering consumer education by developing a model statute and offering information and consultation to states seeking to establish consumer education programs.

2. We accept the responsibility for stimulating independent and cooperative efforts at local, state, and national levels by all consumer groups, whether voluntary or governmental, and all educational agencies to establish effective plans and programs for consumer education in schools at all levels, including college and continuing education. CFA urges all national, state, and local consumer groups to cooperate with appropriate educational institutions and establishments in development of consumer-oriented seminars, institutes and other education programs.

3. CFA recommends and pledges assistance to local affiliates in establishing periodic surveillance of the price and quality of goods and services offered for sale locally. We encourage and will assist in dissemination of pertinent findings to the consuming public.

4. CFA's consumer education committee urges national, state, and local consumer organizations to designate a consumer education representative for the purpose of supporting and coordinating CFA's program to foster and encourage education programs. We will develop and distribute guidelines for the role of national, state and local consumer organizations in consumer education programs.

5. CFA supports adequate funding by national and state legislative bodies to implement basic continuing and in-service professional teacher consumer education programs.

6. CFA urges retailers to provide point of purchase consumer information.

IV. CREDIT

CFA is most concerned about the escalated interest rates, for these rates have a profound impact on consumer expenditures for goods and services.

It is increasingly clear that the nation's social needs have low priority with commercial banks and the Federal Reserve System. The backlog of desperately needed housing, schools, hospitals, natural resource development, transportation, pollution abatement and public facilities weighs heavily on society. Our failures in these fundamental areas will be gravely aggravated if the interest rate crisis persists. The tools to reverse the upward trend of interest rates exist. CFA calls for their prompt use.

1. The Federal Reserve System and commercial banks exercise the privilage of creating the money of the United States. This power should not be delegated to private interests. We call upon the Federal Reserve System to make certain that the money creating power is at all times employed in the public interest. In this respect we urge revision of the Federal Reserve Act to require the President to appoint at least one consumer representative to the Federal Reserve Board.

2. The ordinary citizens is priced out of the home buying market. Even middle-income families cannot afford 7½% interest that inflates the price of new housing. Lower income wage earners and those living on pensions suffer most. To overcome the high interest rate barrier erected against construction of desperately needed homes, CFA proposes a program similar to Rural Electrification Administration or Federal Housing Administration's 221(h) permitting direct federal lending or federal interest subsidies at interest rates of 1, 2, or 3% per year. Depending on need or circumstances, these loans should be to individuals and public and non-profit private agencies—including public bodies and cooperatives—for construction on a massive scale of homes for middle- and low-income families. Funds loaned under such a program should be considered investments by the federal government and not charges against the current budget.

3. CFA renews and reaffirms unalterable opposition to the Uniform Consumer Credit Code as proposed by the National Conference of Commissioners on Uniform State laws and urges its defeat. We recognize the urgent need to prepare equitable consumer credit legislation that will adequately protect the consumer, and we pledge to support such efforts.

4. CFA supports legislation to encourage the flow of credit to urban and rural poverty areas to stimulate the rate of economic growth and employment in those areas and to provide residents there with greater access to consumer, business and mortgage credit at reasonable rates.

5. The credit market must operate to meet the full range of consumer credit needs—home mortgage financing, automobile loans, home improvement loans, education loans. Any decline in the prime interest rate should immediately be reflected in interest charges. CFA urges a national commitment to reasonable allocation of credit. Lenders enjoy the privilege of participation in a lucrative field of commerce. That privilage carries with it a responsibility to operate in a quasi-public capacity.

CFA calls on lenders to assume the obligation of assuring an appropriate allocation of credit to serve the full range of needs. If the financial industry fails to meet this responsibility, federal programs—whether direct low interest loans, government insurance of private loans, or industry rationing—must be initiated to meet the dilemma caused by the inelastic availability of credit.

CFA supports in principle Urban Coalition proposals that call for making credit available to the poor on decent terms, including support of credit unions in low-income areas by encouraging government deposits in such credit unions and by providing them security, management, and technical assistance.

6. In view of the critical status of the student loan program, CFA supports without qualification federal legislation to immediately meet the shortcomings of that program.

7. CFA urges vigorous and vigilant enforcement of the federal Consumer Credit Protection Act and urges both government agencies and private bodies to distribute consumer-oriented educational materials that will help consumers use credit wisely.

8. CFA urges that finance charges, wherever required to be expressed in rate form, be expressed only as a single percentage rate, whether periodic or annual percentage rate. We oppose any legislation or trade practice that would permit expression of rates in a step or graduated form or in any other manner other than as a single annual or periodic percentage rate.

9. CFA reaffirms our adherence to the principles set forth in the March 20, 1971 policy statement of CFA's Committee on Consumer Credit Practices and Policies.

V. ENERGY AND NATURAL RESOURCES

For each $1 of per capita income, consumers today spend an estimated 10c on energy—energy which provides the comfort and productivity essential to improving our standard of living and providing job opportunities. But consumers also pay the upkeep on a system which may be incapable of responding to future economic and environmental needs.

A new national policy on fuels and energy is required to insure an adequate energy supply at reasonable prices, which also insures effective protection of the environment.

Energy is vital to the general welfare and thus affects the public interest. Conservation of land, air, water, and minerals as well as ecological balance involves questions of public stewardship of natural resources. To give consumers the energy and the environment they seek at a fair price, greater public control of fuel and energy policy decisions is essential.

1. The federal government should immediately launch a major energy research and development program comparable in magnitude to the space effort which sent a man to the moon. Such a program must be broadly based and provide for consumer representation. It must include accelerated efforts to solve problems of air pollution, radioactive and solid waste disposal, nuclear power plant safety, water quality, land use, and esthetics, It must develop new and improved methods of recycling, reclamation and energy production techniques. Significant resources should be invested in research and development efforts to seek (A) a "clean up" of existing techniques, and (B) an advanced technology which can increase economic and environmental efficiency. Research activities in the private sector should be supplemented through a program funded and controlled by the federal government. This overall program should be directed to the simultaneous development of a variety of commercially useful systems that will provide consumers with a better choice of energy options for the future.

2. New government policies must be established to avoid waste of natural resources and energy. Congress and the Executive Branch should:

Develop policies providing a more rational location of electric generating stations and routing of transmission lines;

Provide for development of a national power grid and formation of regional bulk power supply facilities;

Promote use of waste heat from industrial plants;

Provide use of present and potential hydroelectric resources in the public interest, including recapture of federally licensed hydroelectric sites when needed in order to obtain full public benefits;

Require correction of strip mining abuses;

Provide improvements in the efficiency of energy-using equipment;

Promote mass transit and internal combustion engine alternatives;

Promote adoption of manufacturing processes and building designs that require a lower expenditure of energy.

3. Immediate action is required to insure that the public interest is protected in the formulation of future fuels and energy policies. Such action should include:

Creation of a single federal agency for coordinating and implementing the fuels and energy policy;

Establishment of public counsels to represent citizens in energy proceedings;

Increased public disclosure of information about activities of corporations in the energy field;

Antitrust and administrative action to preserve interfuel competition and protect consumers by preventing the creation or perpetuation of fuels monopolies;

An independent government investigation and inventory to determine fuel reserves;

Repeal of federal statutes and regulations including oil import quotas which support fuels quota marketing systems;

Preservation of the present system of producing and supplying energy needs through private, public, and cooperative enterprises.

4. Federal lands owned by the citizens of this country account for approximately 50% of our remaining oil and gas, 50% of our coal and uranium, 80% of our oil shale, and 60% of our geothermal resources. Congress should establish a federal energy corporation to help meet the energy needs of the nation through development of resources owned by the people and held in trust by the government, by aiding in advancing technology, by assisting in determining costs of production, by supplying an economic and environmental competitive influence, and by developing a reserve to meet national fuels crises when they arise.

VI. FOOD AND MARKETING

We believe consumers have a right to all information which enables them to choose the best value among food products. Consumers need more specific information about food products to protect their economic interest and safeguard their health.

1. Open dating. The public has a right to know the age and quality conditions of purchased food products. All food products in time lose both quality and nutritional value. Consumers have a right to know the date food products are prepared, the date they are first offered for sale, and/or the last date on which the purchaser can reasonably expect that the quality of the products has not deteriorated. All dates used on food packages should be actual calendar dates (for example, 12–10–71 or December 10, 1971). It should be clearly indicated on the package what the date represents. (For example: packed on 12–10–71; not to be sold after 12–10–71; for best quality use before 12–10–71.) All dates used on food packages should be clear, conspicuous and uniform in style of presentation. Federal and state standards should be set defininng the length of time packaged food products can be legally offered for sale. Federal and state standards should be set for preparing, packing, storing, transporting, displaying, and advertising food products when such conditions significantly relate to maintaining quality. Legislation should provide for adequate enforcement of food standards with suitable penalties against manufacturers, processors, wholesalers, retailers and other handlers, for violations of any federal or state standard. Codes now used by the food industry to conceal the dating of food products should be disclosed to the consuming public.

2. Unit pricing. The public has a right to know the unit price of competing items offered for sale. Standard units of weights and measures are essential to a competitive market system and competitive pricing is threatened by multiple-size, non-standard packages; package sizes frequently disguise rather than disclose weights and volumes.

CFA believes federal legislation should require unit pricing of packaged food products at point of sale and in advertisements. This legislation should establish:

"Unit pricing" as the term used to identify the practice of pricing by units of weight and volume;

Clear, uniform and conspicuous display of unit price information;

CFA believes federal regulatory agencies should then establish:

Specifications for unit price tags or labels, standard units of measure for product categories, and for conveniently located unit price labels;

Mandatory standardized packaging within product lines since Congress has adopted the metric system necessitating package size changes.

Until federal legislation is passed, CFA encourages local and state regulation.

3. Nutrient labeling. The public has a right to know the nutrient values of food offered for sale. Statements of nutrients should appear on labels of packaged foods and in displays of non-packaged foods. This information should include nutrient composition, calories, and the serving basis for these claims. Nutrient information should be stated in easily understood units as a portion of the Recommended Daily Dietary Allowance. Serving size should be defined by both weight and measure. Manufacturers and processors should be responsible for product analyses and for the accuracy of the nutrient claims on the labels. Nutrient information used on the labels should be set by the National Academy of Science-National Research Council. This agency should establish which nutrients are to be listed. Protein claims should be adjusted to reflect relative protein

quality. Nutrient information about food products should be clearly, uniformly, and conspicuously displayed for consumers.

4. Ingredient labeling. The public has a right to know all ingredients in a packaged food whether or not a Standard of Identity has been set. If necessary, enabling legislation should be enacted to authorize FDA, FTC, USDA and other appropriate regulatory agencies to require:

Listing common or usual names of all ingredients, including food additives and their functions on labels of all food products, including those with a Standard of Identity;

Listing ingredients by percentages to enable consumers to assess economic value and food quality; and

Identifying food ingredients in terms of source such as "wheat protein-hydrolysate" rather than "protein hydrolysate," "potato starch" rather than "starch," and "peanut oil" rather than "vegetable oil."

5. Consumer participation in decision-making. The public has a right to participate in decisions relating to standards, procedures, and rules used to determine and deliver information to consumers. Prior to the adoption of any standard, procedure, or rule, consumers have a right to review the proposed determination in public hearing.

6. Fish inspection. CFA continues to seek legislation providing continuous, full-time fish and fish product inspection to adequately protect the health and safety of consumers.

7. Meat and poultry inspection. CFA opposes any weakening of the federal meat and poultry inspection laws and their enforcement. CFA supports strengthened inspection by further training and upgrading of federal inspectors and an increase in their numbers. Efforts of states to encroach on federal jurisdiction, thus weakening protection, must be fought vigorously.

8. Grading. CFA urges mandatory quality grading of foods on a uniform, nationwide basis with easily understood grades such as A, B, C, D as a means of aiding the consumer in making choices. A vigorous program of research should be undertaken to assure that grades are based on consumer preferences.

9. Food additives. Use of food additives is increasing. Questions about their safety continue. CFA urges FDA to use the best scientific and technical information in sharply intensifying its review of food additive safety.

10. Chemical and biological additives and residues. Serious health dangers exist in certain chemical and biological residues in food. CFA urges greatly increased emphasis by proper federal and state agencies in monitoring the total food supply for additives and residues such as pesticides and radioactive compounds. These agencies should review the guidelines and tolerances in light of new scientific evidence and take action accordingly.

11. Standards of identity. CFA urges development of more flexible Standards of Identity to encourage improved nutrition without having to demean the product by renaming it or branding it "imitation" or concealing its real identity.

12. Trading stamps. CFA urges prohibition of trading stamps, games and other gimmicks that have unnecessarily but significantly increased the cost of consumer goods.

13. Independent agency. CFA urges establishment of an independent agency to administer all inspection, grading, and consumer protection programs for food presently administered by the Commerce Department, USDA, FDA and FTC (other than FTC's anti-trust activities).

VII. HEALTH, DRUGS AND MEDICAL

1. CFA is convinced that the medical care crisis can be traced directly to the lack of consumer involvement in decision making. We urge immediate reconstitution of governing boards of all non-profit insurance plans, hospitals, and other health care agencies to insure consumer involvement and guarantee majority control to the subscribers of those services and plans.

2. We are deeply concerned over the crisis in health care which worsens everyday and urge Congress to enact a comprehensive national health security plan providing:

An assessment of health care delivery systems;

Establishment of education programs designed to foster good health;

Establishment of necessary preventive and outreach services;

Availability of all physical, mental, social and supportive services necessary to maintain or restore health;

Availability of rehabilitation, health maintenance and long-term care when disability occurs.

We urge Congress to recognize that catastrophic coverage is no substitute for comprehensive health coverage, though the inclusion of a realistic proposal against catastrophic health costs deserves serious consideration as part of a national health security program. Such a health plan must include rigid cost controls on the price of the delivery of medical services and modify the unlimited "fee for service" system.

3. We urge, in response to the critical shortage of physicians, federal assistance to medical schools and economically disadvantaged students to enable them to attend medical schools and appropriate inducements to graduates to locate in areas currently denied adequate medical care.

4. We urge development of community health centers making available the full range of medical services—including prenatal, pediatric, and dental care, as well as nutrition and sanitation education—so that total, effective, health care is assured to the elderly, the poor, and the rural consumer.

5. We urge legislation to eliminate co-insurance and deductible provisions of Medicare and to extend Medicare coverage to outpatients' drugs, eye care and the cost of eye glasses, dental care and the cost of dentures, and hearing aids.

6. We insist that the same nursing home standards be provided under Medicare and Medicaid as were intended by the 1965 amendments to the Social Security Act, which established those programs.

7. We urge CFA members to affiliate with prepaid group practice group health plans.

8. We urge CFA members to insure that all comprehensive health planning commissions meet requirements of law regarding majority consumer representation we urge consumer groups to provide responsible consumers to serve on these commissions. We urge that the Administration provide funds for training consumer representatives serving on health planning commissions.

9. We urge the Secretary of HEW to press for immediate promulgation of regulations directing states to survey unmet medical needs of indigent children, as required in Section 1905(a)9(4)(B) of the Social Security Act, as amended in 1967. Action to protect the health of the nation's children is long overdue.

10. We urge that before any cosmetic is offered for sale or distribution, FDA must be satisfied as to its safety and utility and must approve its label disclosing fully the composition of the cosmetic.

11. We urge licensing of drugs and medicines by generic name on federal, state, and local levels and that such name be included on all prescriptions and prescription labels.

12. We urge immediate enactment of long-delayed legislation establishing a drug compendium.

13. We are distressed by studies documenting price variations up to 1200% for prescriptions of the same drug in the same area. We believe this is due to a host of restrictions and prohibitions placed upon free competition in advertising and sale of prescription drugs by registered pharmacies:

Including prohibitions against advertising of drug prices, against discounts for older people, and against posing of drug prices in stores;

Artificial barriers to entry of discount and chain drug stores into new markets;

Restrictions on ownership of pharmacies;

Prohibitions against pharmacies in supermarkets and general merchandise stores;

Many other devices having no relevance to the public health.

CFA urges affiliates to work for repeal of all such laws and regulations. Recognizing further that restrictions against price competition for prescription drugs originate with state boards of pharmacy and that most such boards are dominated by druggists, CFA recommends inclusion of strong consumer representation on state pharmacy boards.

CFA further urges affiliates to become "friends in court" in suits challenging the constitutionality or validity of laws and regulations which inhibit drug price competition.

14. We urge enactment of legislation forbidding tie-ins between hospitals, nursing homes, and other health care providers and pharmacies. We believe it is unethical for physicians to own stock in drug manufacturing companies, drug marketing and packaging companies and pharmacies.

15. We urge the government to purchase drugs only by generic name.

16. We urge requirements that written information in understandable language be given recipients of all prescriptions explaining uses, directions, precautions and side effects—including possible hazards of mixing prescribed medication with other drugs or foods.

17. We urge a requirement for clear, prominent, expiration date labeling for drug effectiveness of prescriptions and over-the-counters.

18. The name and place of business of the manufacturer should be required on labels of all drug products.

19. Quantities of all active ingredients should be required on labels of all drug products.

20. We urge vigorous regulatory action by the FTC on advertising of over-the-counter drugs containing misleading efficacy claims, promoting insignificant product differentials, and offering drugs for the treatment of every day interpersonal and human problems. We condemn all drug advertising which encourages, through themes or saturation advertising campaigns, pill-popping as a way of life.

21. The one-million Americans in nursing homes financed under Medicare, Medicaid, and other programs should receive the highest standard of health care. Yet deeply distressing evidence mounts that many nursing homes neglect their patients, treat them with indignity, and provide minimal health care. Many state and federal agencies, including HEW and state health and welfare departments, have failed to secure the appropriations required or to exercise the aggressive leadership needed to enforce standards of safety, health, and general welfare for nursing home patients. The result is that too many elderly persons have been neglected and payments for their care misused. This failure of governmental authorities to enforce standards has induced commercial operators, looking for quick returns on their investments, to invade the nursing home field by establishing what amount to chains of motels insufficiently concerned with the health and welfare of residents in their charge and to convert nursing home programs into housing programs, imposing on the elderly a "buyer beware" philosophy.

We urge a substantial increase in direct grants and loans to non-profit and government-operated nursing homes, with an im-

mediate, short-term goal of providing half the nation's nursing home services. We also urge substantial funds for alternative methods of care—foster homes, sheltered low-cost supervised housing and day-care centers, homemaker and home health aid services. We encourage state and community organizations affiliated with CFA to develop citizen-review teams to visit and inspect nursing homes periodically.

VIII. HOUSING

The high interest policy of this Administration has escalated the cost of homes and apartments beyond the means of the great majority of Americans seeking housing.

The 1968 Housing Act raised the expectations of the American people that under its interest subsidy and rent supplement provisions, massive low- and moderate-income housing programs would be undertaken. This Administration drastically curtailed federal funds for housing and urban development. Miniscule appropriations have been made for interest subsidies and rent supplements to provide housing for families with limited financial means.

We recognize that by failing to meet minimum national housing goals we are requiring millions of Americans to continue living in deplorable housing in urban as well as in rural areas. For tens of millions of Americans to endure the misery of indecent, unsafe, and unsanitary housing is a national disgrace. Numerous Presidential commissions have warned of the dangers that exist in our cities because of decay and uncontrolled blight. In a nation where the gross national product is almost a trillion dollars, it is inexcusable that such inhuman conditions exist and that the Administration does so little to effect improvement.

1. We urge Congress to establish a National Bank for Housing that can, through flexible interest rates and subsidies, provide adequate financing for comprehensive, coordinated programs aimed at producing low- and moderate-cost housing on a massive scale.

2. We urge Congress to abolish unrealistic income restrictions on housing supported directly or indirectly by the federal government.

3. We urge elimination of zoning regulations and building codes that restrict the development of housing for all.

4. We recommend those CFA member organizations, such as the rural electric cooperatives in Wisconsin and Arkansas, which have spearheaded and supported low- and middle-income housing.

5. We urge Congress to require accountability and responsibility from builders and developers who are subsidized by government monies. A home buyer has a right to expect a certain quality of construction at the lowest possible cost to protect his immediate investment and unnecessary costs in the future.

6. We urge Congress to require that topsoils and trees be conserved so that landscaping costs to homeowners can be reduced and needless soil erosion avoided. Such a policy would also enhance the aesthetic value of the area.

7. We urge Congress to provide necessary funds for adequate slum clearance in urban and rural America. We also urge HUD to maintain housing projects standards including construction and maintenance, at a level which will eliminate slum conditions, provide housing based on low- and middle-income family needs and protect dwellers from unreasonable profiteering by project developers.

IX. THE LOW-INCOME CONSUMER

CFA, in its effort to promote the rights of all consumers in harmony with the general welfare, encourages member organizations to include active participation of low-income people. If we are to develop full potential, we must not overlook the masses of poor people discriminated against in the market place. The low-income consumer may be a retiree living on a fixed income, an aid-to-dependent-children mother trying to find shelter for her children, an unskilled worker with a credit problem, a Spanish-speaking migrant who is the victim of the language barrier, a student, or a young adult. These people need assistance, and we need their support. We must join forces.

1. Many low-income consumers are denied easy access to competitively priced goods and services because of the lack of outlets and available credit sources in low-income communities, forcing many poor consumers to trade at high-priced stores which subject them to the evils of "easy" credit and door-to-door sales abuses. We urge local businesses and business organizations to secure establishment of low-priced, competitive businesses in low-income areas. In addition to private efforts, federal and state housing, small business and model cities programs should be required to consider inclusion of such facilities in their plans affecting low-income areas.

2. Low-income consumers have special problems and directly suffer when their problems are not considered by consumer groups and consumer protection councils. They have special economic problems and special health and nutritional needs. We urge all consumer groups to solicit membership among the poor and to develop programs to alleviate their problems. We also urge all public agencies involved in consumer protection and services to insure meaningful participation of low-income consumers in policy and program development and to include representatives of the poor on all citizens advisory groups. We further urge that low-income consumers be included in CFA efforts to expand consumer organizations and that special funds be made available by CFA affiliates, particularly labor, credit unions and cooperatives, to organize low-income consumers.

3. We urge immediate elimination of discriminatory utility practices, including deposit requirements.

4. We urge the enactment of legislation guaranteeing to all consumers adequate insurance coverage at reasonable rates regardless of location. Government subsidies should be available if necessary. We urge that state insurance commissions be responsible for plans that asssure the low-income consumer equitable protection.

5. We urge initiation, both on the national and state level, of a review of banking practices specifically as they relate to low-income groups, and we seek a commitment from the credit industry to establish credit for the poor at reasonable interest rates an on appropriate terms and repayment plans.

6. We urge investigation and correction of discriminatory practices against the poor, including differential mail order catalogs, door-to-door sale frauds, inadequate services, and stores with shoddy merchandise.

7. CFA urges reform and extension of the food stamp, school lunch and breakfast programs. Among changes we seek are provision of free stamps, lunches and breakfasts to all persons with incomes below the poverty level, an increase in the cost per meal available under these programs, a choice by the low-income consumer of participation in the food stamp or commodity distribution programs, relaxation of the onerous and discriminatory food stamp work requirement, and mandatory operation of these programs in all US counties and cities.

8. We urge federal support for innovative community programs to provide low-cost food and homemaker/home-health-aide services for shut-ins, the elderly, and others who have special needs.

9. We urge establishment of preventive health methods to insure good nutrition in all foods including snack foods which should be nutritionally fortified.

10. We urge establishment of locally controlled and locally run consumer organizations in low-income areas. These organizations should handle consumer complaints of members, and when appropriate, engage in direct action, including picketing for redress of consumer grievances.

11. We urge enactment of federal legislation in support of a guaranteed annual income equal to the modest but adequate Family Income Budget, and adjusted to changes in the Consumer Price Index of the Bureau of Labor Statistics.

X. TRANSPORTATION

1. Balanced transportation. CFA supports a balanced transportation system based upon the community design concept embodying land-use studies, housing developments, community facilities, work opportunities, and all other relevant aspects of planning.

Although more than nine-tenths of the US interstate highway program is completed, the transportation crisis grows. A major reallocation of financial resources is indicated. A different set of values must be endorsed to achieve a balanced transportation concept. As an immediate goal, CFA urges application of federal-state resources to create the required balanced system. For support of mass transportation, we suggest utilization of Highway Trust Funds together with funds now allocated Department of Transportation and HUD programs.

2. Public transport. CFA supports the state transit authority concept with broad powers to move effectively in using available financial resources. Public transportation should become a national objective with the highest possible priority, producing a convenient, economical, and ecologically safe and sound system of moving people within cities and in rural areas as well as between cities. Public transportation is a public necessity. As a consequence, it can no longer be assumed that passengers alone should absorb the cost of the transportation system. A public corporation, subsidized by the state and/or political sub-division with access to state funds including highway user funds must be established. The public transit authority should be as flexible and imaginative as each separate set of transportation facts demand. While rapid rail service might be most appropriate in the crowded Northeast corridor, other sections of the nation may have different needs requiring different solutions.

3. Auto and highway safety. CFA again calls for undiminished efforts to improve safety in design of streets, highways and cars that use these facilities. More than 100-million cars now registered cause an annual death toll of 56,000. An additional 4½-million sustain injuries. The economic loss is estimated at more than $16 billion. Automobiles can be built to be safer. Better restraint systems, protective padding, and safe interior design can do much to reduce loss of life and suffering. Exteriors of automobiles can and should be designed to eliminate spear and cleaver protrusions that aggravate injuries in car-pedestrian accidents. Maximum level safety standards for new and used cars should be supported and developed under stringent federal leadership. Insurance carriers must be encouraged to provide lower premiums for vehicles which, because of their design, reduce the incidence of injury and lower repair costs.

4. Auto insurance. We urge again that Congress establish and enforce nationwide, minimum standards of operation for auto insurance companies. Licensed drivers need universal acceptance and protection against arbitrary and capricious policy cancellation victimizing old, young, poor and minority consumers.

Consumers face continued increases in

premiums for mandatory auto insurance usually required by state law. The present automobile liability insurance system is slow, expensive, unfair to consumers and accident victims. CFA urges prompt enactment of comprehensive no-fault auto insurance. Group auto insurance should be considered as a means of curbing escalating premiums; CFA urges elimination of state laws prohibiting such cooperative efforts.

5. Charter flights. Consumers need access to all forms of transportation and the right to spend travel dollars as they choose. Several CFA members participate in low-cost educational, cultural, and recreational travel by chartered aircraft. These groups resent roadblocks placed on such travel by restrictive and complex rules of the Civil Aeronautics Board, some foreign governments, and the International Air Transport Association.

CFA asks the CAB to loosen restrictions on travel group charters before taking final action on its proposed new travel group charter concept. We urge adoption of the European plan of inclusive tour charters; we further request the State Department to negotiate agreements with foreign governments that assure charter travelers the same landing and up-lift rights guaranteed to those using scheduled services.

XII. OTHER AREAS OF CONCERN

1. Class action. Since individual redress of a consumer grievance is often unavailable or too expensive to pursue in the courts, it is imperative that consumers and consumer groups have the right, free of triggering devices, to maintain class actions.

2. Independent consumer protection agency. We endorse creation of an independent consumer protection agency with full powers of advocacy and capable of representing consumers before all government agencies and the courts. The new agency must have full powers of investigation, subpoena and intervention in formal and informal proceedings. It must have full access to judicial review and maximum independence from the Executive Branch.

3. Consumer groups. We urge federal legislation to finance creation and continued operation of strong, independent, state and local consumer groups.

4. Corporate responsibility. CFA pledges to work with like-minded groups in a continuing campaign to hold corporations accountable for practices and policies inimical to consumers and the public good and to encourage greater measure of social responsibility in the use of their tremendous power in controlling the social and economic life of the nation.

5. State-local consumer offices. States have jurisdiction in vital areas affecting consumers where consumer exist, CFA vigorously endorses strong state and local consumer offices to represent consumers, backed with effective laws, staff, and budget. We recognize the need for federal-state coordination, commend federal-state cooperation, emphasize effective state and local consumer representation and protection, and commend the President's Special Assistant for Consumer Affairs for establishing an office of federal-state relations to work with state offices and encourage state consumer protection.

6. Funeral industry. CFA recognizes that continuing problems in the funeral industry require united consumer action. The consumer's right to know is denied by the difficulty of comparing prices. The consumer's right to choose is rendered meaningless once he brings the deceased to a funeral home. The buyer is highly vulnerable to customary selling practices that encourage unnecessary expenditures. The consumer's legal and political rights are too often compromised. With few exceptions, state regulatory boards are composed of funeral directors and are without effective consumer representation. The funeral industry maintains a strong lobby, and legislation regulating funeral practice is often designed to promote the interests of the funeral industry at the expense of the public welfare. CFA pledges cooperation in developing group, pre-planned, pre-paid funerals as one means of correcting these abuses.

7. Regulatory appointments. Consumers have a vital stake in the policies and practices of local, state and federal regulatory agencies. Appointments to these agencies fundamentally concern organized consumers. CFA urges the President to consult with national, state and local consumer organizations in regulatory appointments having an impact on the consumer. CFA also urges its affiliate organizations and their members to express this view to the appropriate state and local authorities.

8. Administrative procedures Act. Consumer protection agencies each year change thousands of regulations having impact of law. Most changes are minor. Many have more important consequences than congressional amendments to authorizing legislation. The consumer often does not know that an agency is considering a change in a regulation, and he cannot compete with well-financed, expert trade associations in evaluating this change. CFA urges Congress to reconsider the Administrative Procedures Act, and asks each agency dealing with consumer protection to review its procedures. We urge regular congressional inquiry into consumer involvement in such procedures.

9. Repair services. Every consumer organization involved in considering consumer complaints reports unsatisfactory repair service as a major area of consumer frustration and concern.

Recognizing the prevalence and severity of repairs of automobiles, radio and television, appliance and home repairs as sources of consumer complaints, we urge local, state, and national action:

Registering establishments engaging in repair work and making such establishments responsible for quality of repair and for truth-in-advertising services.

Policing repair establishments to assure that consumers seeking repairs obtain satisfactory service at reasonable costs.

SPECIAL RESOLUTIONS

1. No-fault auto insurance. We endorse and urge prompt enactment of Federal legislation to provide no-fault automobile insurance, as proposed by Senators Hart and Magnuson.

2. Earth week. We endorse the Joint Resolution of Congress designating the third week of April of each year as Earth Week.

3. Truth-in-advertising. We support enactment of the Truth-in-Advertising Bill introduced by Senators Moss and McGovern to require advertisers to make public documentation of claims as to product performance, safety and price comparisons.

4. Children's advertising. We abhor the exploitation of children ad merchandising vehicles through the proliferation of commercial advertising in broadcasting periods during which children constitute the major audience. We support proposals before the Federal Trade Commission and Federal Communications Commission for stringent rules to sharply limit advertisers' access to children's minds.

5. Consumer representation. We urge the enactment of S. 607 to make available funds and expertise to represent the consumer interest in regulatory agency proceedings.

6. Consumer credit. We urge support of the following actions to improve the state of consumer credit:

Sen. William Proxmire's Fair Credit Billing Act.

FTC's proposed trade regulation rule calling for cooling-off period on door-to-door sales.

FTC's proposed trade regulation rule abolishing holder-in-due course.
credit collection practices.

Any investigation, legislative or administrative, directed toward limiting abuses of

The truth-in-saving bill introduced by Rep. William Roy, Senator Vance Hartke et al.

7. FTC effectiveness. At least thirty bills are pending in Congress to prevent the FTC from completing litigation which may save the consumer five percent or more in the cost of national brand name soft drinks. These bills are the result of strong industry lobbying efforts, and at least one of the bills, H.R. 12261, is word-for-word a copy of a bill drafted by an association of bottlers. CFA deplores political interference in the legal regulatory process and strongly urges that Congress reject any action frustrating FTC's ability to perform its essential function of watchdog in the market place.

8. Price competition. CFA applauds FTC's January 24, 1972 complaint against the four largest cereal manufacturers. For many years there has been no price competition in the ready-to-eat breakfast cereal industry due to mergers, false advertising, meaningless proliferation of brand names, substitution of product imitation for product innovation, and control of shelf space by Kellogg, the industry's largest producer. These practices result in no benefits to the consumer, permitting industry giants to charge monopoly prices. It is urgent that FTC expeditiously pursue this matter to a satisfactory end and take decisive action to restore price competition at the retail level. It is equally important that FTC pursue the policy set out in the "cereal" complaint in other concentrated industries, starting with those which impose oligopoly-based overcharges on the consumer. Only in this way will individual consumers enjoy benefits intended under government enforcement of antitrust laws.

9. Legal assistance. We urge Congress and the President to assure continuation of Rural Legal Assistance and Urban Legal Assistance Programs.

10. Poverty programs. We urge Congress and the President to assure continuation of the Office of Economic Opportunity which involves participating of the poor in planning and implementing programs to combat poverty.

11. Insurance abuses. We urge prompt enactment of legislation to curb abuses by insurance companies and lending institutions in the sale, pricing and administration of credit life, accident and sickness insurance.

12. Fish inspection. CFA deplores the fish inspection bill passed by the Senate in December 1971. The measure would lull the consumer into a sense of security without providing protection. We urge the House to pass only legislation providing full time, continuous fish inspection, as provided by Senator Philip Hart's 1970 bill.

13. Mortgage counseling. We urge that Congress appropriate funds for Sec. 237 of the National Housing Act to provide adequate mortgage counseling for low income homeowners, and that in the meantime, state and local consumer organizations provide to the extent possible such counseling on a voluntary basis.

14. AFL–CIO price monitoring watch-dog program. Though a Price Commission has been created by the Administration presumably to control prices and keep inflation within reasonable boundaries, the plain fact is that retail price controls are virtually non-existent. The Price Commission itself contains no consumer voices in its membership.

There have been few meaningful, specific adjudications to control retail prices and those few are not being enforced because the Administration has made it clear that its essential enforcement will be "voluntary."

It is a matter of record that much of the merchandise exempt from controls has experienced drastic price increases while those items covered by action of the Price Commission are also on the increase. For example: 98 percent of the companies which have asked the Price Commission for increases have been granted their requests.

In light of the absence of serious and meaningful Price Commission controls, it is imperative that consumers undertake price policing activity in their own defense. In recognition of this very distressing situation, the AFL–CIO has organized a Price Monitoring Watch Dog Program which is attempting on the local level to act as a surveillance operation which hopefully may help stem the tide of rising prices. This trade union activity is a most worthy action on behalf of consumers.

Therefore, CFA approves and applauds this action of the AFL–CIO and urges its state and local affiliates to support these efforts of the AFL–CIO Price Monitoring Watch Dog Program which are so clearly in the interest of the American consumer.

15. Medicare. The President promised at the White House Conference on Aging and in his State of the Union Message that he would recommend elimination of the premium payments by beneficiaries to supplementary medical insurance (Part B of Medicare). In order to protect the Social Security Trust Funds and place no additional burden on payroll taxes, CFA urges that all costs of the Part B funds of Medicare be provided in the future from general revenues.

16. Pending legislation. CFA endorses and supports:

The independent consumer protection agency bill pending in the Senate Government Operation's Committee

The truth in food labeling act introduced by Sen. Frank E. Moss (D-Utah) and Sen. Vance Hartke (D-Ind)

The product warranty bill introduced by Sen. Warren Magnuson (D-Wash) and passed by the U.S. Senate

The product safety act now pending in the Senate Commerce Committee

17. Flouridation. We favor the addition of fluoride to community water supplies in localities that do not now have safe and effective levels of fluoridation.

18. Distributorships. We urge that FTC and SEC immediately use their existing authority to protect the public against the multi-level or pyramid form of distributorship plan being sold in most states. We pledge support for comprehensive federal and model state legislation to eliminate these forms of predatory enterprises.

19. Memorial. We pause in the memory of those who served the consumer cause for many years and died this past year. Their leadership meant much not only to CFA but to all consumers. We honor the memory of Robert L. Smith, Morris Kaplan, James Mendenhall, and John Edelman.

20. Appreciation.

CFA authorizes and directs the executive director to extend our thanks and appreciation for the time, effort and resources expended by the Committee on Consumer Credit Practices and Policies in drafting the CFA Policy Statement on Consumer Credit Practices and Policies of March 6, 1971. (Final copy to include list of names of committee.)

We express our appreciation to all program participants, the press, radio, television, the Statler Hilton staff, and all others who contributed to the success of CFA meetings.

We express our appreciation to the member organizations that shared staff with CFA to make Consumer Assembly possible—Cooperative League of USA, National Farmers Union, and National Rural Electric Cooperative Association.

We express our appreciation for the work of the executive director and the staff for their untiring efforts on behalf of CFA.

NECESSARY PERMANENT MILITARY FACILITIES

Mr. COOK. Mr. President, last week, along with the Senator from Tennessee (Mr. BAKER), I visited Fort Campbell, Ky., which is to be the permanent home of the 101st Airborne Division—Airmobile. We were impressed with the leadership that is being exercised but are convinced that there is much that Congress can and must do to provide necessary permanent facilities.

Senators are aware that the demands of the Vietnamese conflict seriously have curtailed the authorization and appropriation of funds for construction throughout the Military Establishment. However, now that the troops are being withdrawn and the selection of permanent homes has been made for those units which are to remain in the inventory, we urge that funds be authorized and appropriated for adequate facilities.

We are proud that Fort Campbell has been selected as the permanent home of the 101st Division. It is even more important that the individual soldier in the division is proud for Fort Campbell. A man who can be proud of his leaders, of the way he lives, of the way he does his job, and of the way his dependents are supported is an individual who can well take pride in being a soldier. From this pride in self it is only a short step to high morale. We have an opportunity here to help the military recapture that part of the pride in being a soldier that may have been lost during the last few troublesome war years. In our visit we reviewed each MCA project requested for Fort Campbell for fiscal year 1973, which includes the expansion of the airfield complex, modernization of the living quarters for enlisted men and officers, and the construction of recreational facilities and a commissary. We found each project to be essential and we urge that each be approved.

In a sense, Congress is on trial here. Congress has limited the extension of the draft and directed the military to develop an all-volunteer force. In return the military has launched a vigorous campaign to achieve this objective. In order to attain any degree of success in recruiting an all-volunteer force, the military must be able to offer the individual modern housing, more privacy, as well as adequate recreational, medical, and commissary facilities for himself and, where authorized, for his dependents. Fort Campbell offers many of these facilities. However, neither the soldier nor his dependents are being supported to the standards guaranteed to him by the recruiter.

The authorization and appropriation of funds for the fiscal year 1973 MCA projects requested for Fort Campbell, as well as for those required for the design of a modern hospital and adequate family housing, would de much to improve the facilities, and we support and urge their approval.

THE FEDERAL GOVERNMENT HAS A RESPONSIBILITY TO PROTECT STATE AND LOCAL GOVERNMENTS AGAINST THE BUSINESS CYCLE

Mr. PROXMIRE. Mr. President, in our recent annual report, the Joint Economic Committee has again recommended that Congress enact legislation which would help State and local governments survive periods of high unemployment. When unemployment is high and personal income growth is reduced, revenues fall off correspondingly at all levels of government. As we all know, Federal revenues in fiscal 1972 will be about $27 billion below what they would have been at full employment. The same thing happens at the State and local level. Precise estimates are lacking, but in calendar 1971, State and local tax revenues may have been about $7 billion below what they would have been at the same tax rates if the unemployment rate had been 4 percent.

The Federal Government can protect itself against this revenue loss. Indeed, the Federal Government's ability to engage in deficit financing helps to stabilize the economy and prevent recessions from becoming worse. State and local governments do not have this ability to finance deficits through borrowing. They must either raise tax rates, cut back on services, or both. Raising taxes and reducing services is precisely the wrong thing to do in a recession. The Federal Government, if it cannot always succeed in maintaining full employment, at least has a responsibility to protect State and local governments from the consequences of our failure to better manage the economy.

This protection can be provided through a system of Federal grants related to the unemployment rate. No grant would be made when the economy was at full employment, but if unemployment rose, the grants would begin and would be adjusted in amount according to the severity of unemployment. This would enable State and local governments to estimate their total revenues on the basis of a full employment economy and to plan their expenditures accordingly. This in turn would protect our citizens against cutbacks in public services and tax increases in time of recession. It would protect our economy against the intensification of a recession caused by the present necessity for State and local governments to make destabilizing tax and expenditure changes.

Of course, there would be many administrative problems to be worked out in order to develop an effective and smoothly functioning program of countercyclical grants. But these problems are not insurmountable. I ask unanimous consent to have printed in the RECORD an article written by Profs. A. Dale Tussing and David Greytak, of Syracuse University, which spells out in some detail one possible scheme for countercyclical grants. I hope the article will provide further discussion of this approach to reducing unemployment and strengthening our economy.

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

REVENUE-STABILIZING GRANTS: A PROPOSAL

(By A. Dale Tussing and David Greytak)

FOREWORD

This paper was first presented at the annual Conference on Taxation of the National Tax Association at Kansas City, Missouri, on September 27, 1971. The paper has been accepted for publication in an early issue of *Papers and Proceedings of the National Tax Association*. The ideas it contains are important and timely enough, however, that they deserve to be disseminated now.

A. Dale Tussing is Associate Professor of Economics and David Greytak is Assistant Professor of Economics in the Maxwell School. The research reflected in this paper was supported in part by this Program and also by a grant from the Paul H. Appleby Fund of the Maxwell School. The authors wish to acknowledge the valuable assistance in the research and writing of the paper by Mr. Thomas Carroll, a graduate student in the Economics Department.

GUTHRIE S. BIRKHEAD,
Director.

The purpose of this paper is to propose a scheme for intergovernmental grants or revenue-sharing, to be called Revenue-Stabilizing Grants (RSG's), whose purpose, in brief, is to provide federal transfers to state and local governments during periods of downturn in general economic activity, such as to offset any decline in state and local tax and nontax revenue attributable to the economic decline.

This paper also provides estimates of the dollar amounts involved, and suggests allocational formulae, but these are necessarily preliminary rather than definitive.

As this is written, the Congress has before it the revenue-sharing proposals of President Nixon and others. The present proposal is in no way a substitute for these. The case would be equally strong for the present proposal, we believe, whether the Congress enacts the President's scheme, some other substitute, or none at all.

THE CASE FOR REVENUE-STABILIZING GRANTS

The basic proposal is very simple. Should national unemployment rates exceed a predetermined threshold, such as five percent, for a given period of time, such as three months, the federal government would transfer to states and localities the estimated difference between their actual revenues and the revenues they would have raised at a designated "full-employment" level such as four percent unemployed.

Ways of achieving such a transfer program will be discussed later. In this section, we shall discuss the consequences of successful introduction of an RSG scheme.

It is fairly generally agreed that states and localities should leave countercyclical fiscal policy to the federal government, for a variety of well-known reasons.* It is not the purpose of this proposal that states and localities be made agents of federal anti-recession fiscal policy. On the contrary, it is our purpose to *neutralize* the net influence of states and localities. Presently, their influence is procyclical; because of revenue losses in periods of economic slack, and because of a common requirement for budget balance, these governments are forced to restrict their spending during these periods (or to raise tax rates), thus aggravating any decline. Their spending consequently speeds up in prosperous times, perhaps aggravating inflation. Adoption of some form of RSG would mean that states and localities could budget every year (in terms of estimating revenue) *as if* there were full employment, and could ignore the actual business cycle.

The purpose is not merely to avoid a procyclical influence from state and local governments, the macro effect. It is also to relieve the cyclically-induced pressures on these governments, and to increase the efficiency of their budget processes. If state and local government revenue systems are even moderately sensitive to cyclical influences, induced reductions in their expenditures mean, *ceteris paribus*, a real shift away from state and local expenditures in cyclical downswings. These allocational consequences are presumptively inefficient. They are even more so, if it is true, as is widely believed, that institutional factors (multiplicity of jurisdictions, inelastic revenue systems, interjurisdictional tax competition) hold state and local expenditures below optimal levels anyway.

A device such as the RSG also adds, in effect, another automatic or built-in stabilizer to the Federal fiscal system. Our proposal has some resemblance to proposals made in the past for so-called "formula flexibility," though these have without exception involved tax-rate changes. Tax-rate formula flexibility (or its alternative, limited executive discretion over tax rates) seems more politically and constitutionally sensitive than the technique proposed in this paper. It is regarded as highly unlikely that the Congress will, in the sense implied by tax-rate formula flexibility, cede any of its taxing powers. The chances for the present proposal seem more promising, since it involves grants-in-aid similar to those already used in a variety of programs.

Finally, the scheme proposed here would have an added, though minor, salutary effects. To the extent that states (and even localities shy away from reliance on income-based taxes for raising revenue because they fear the cyclical consequences of using a tax with a high short-run (cyclical) income elasticity, the present scheme overcomes an argument against the use of such taxes. (This is probably not a major reason for reluctance to use such taxes, however.)

DETERMINATION OF AMOUNT AND ALLOCATION AMONG UNITS

Ideally, an RSG system would operate through a series of equations, one for each chosen state or local government unit, each one estimating the full-employment-equivalent revenue yield for that unit, so that comparisons could be made between that estimate and actual revenues. Where national unemployment rates exceeded the chosen threshhold level, *e.g.*, five percent, there would be an automatic federal transfer to that unit. Total RSG payments would merely be the sum of individual payments, estimated from the thousands of individual, empirically-based, local equations.

A national unemployment-rate threshhold is suggested for two reasons. First, the system would be needlessly complex if *any* variation in unemployment rates, no matter what the level, resulted in increases or reductions in compensatory payments to state and local governments. What is desired is not a continuously-operating fine-tuning system, but rather one which is available in cyclical emergencies. The reason a national rather than a state or local unemployment rate is chosen is so that RSG's not compensate for governmental revenue losses which are the result of regional, structural unemployment. (This does not necessarily imply an objection to such aid for depressed regions, but only that such aid should not be combined with cyclical relief.)

The technique described as "ideal," consisting essentially of thousands of individual estimating equations, is impractical. One doubts that sufficiently accurate and comparable data exist upon which to base such estimates, and even if it did, the task would be enormous (and never completed—all such equations would have to be continuously updated). Putting aside these difficulties, it is not clear how legislation would be written to incorporate or authorize use of the equations. Finally, one suspects that this technique would provide results only after long lags.

At the other extreme in simplicity or promptness would be the method of estimating, with one equation, the total state and local revenue loss resulting from high national unemployment rates, and then apportioning a total grant equal to that loss according to some rule of thumb. One such rule would be per capita allocation, as in the Heller-Pechman-Nixon scheme. Another would be a distribution according to the unit's share of total state-local own-raised revenues, in a previous full-employment period.

These rules, while they have the advantage of promptness, simplicity, and certainty, have a serious failing. They do not distinguish between units which have highly cyclically sensitive revenue systems from those that do not. This means that in periods of recession, those with cyclically insensitive systems would receive windfall gains, while those with sensitive systems would not be fully compensated for their loses. Besides not fully achieving the objectives of the system, such a rule would also raise serious equity problems.

A simple compromise between the extremes is proposed. An aggregate amount of loss is determined by a single estimating equation. It is allocated among units according to each

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* There are three main reasons. (1) Open economies. States and localities have, in effect, "open economies," which engage in very considerable amounts of "foreign trade" with other regions. There is consequent inability to contain the effects of counter-cyclical fiscal policy within the boundaries of the jurisdiction. The problem is a familiar one of "spillovers" in fiscal federalism. Other things being equal, the larger the unit the less "open" it is, and the more self-sufficient it is. But other things do not tend to be equal; the largest units (*e.g.*, California, New York) also tend to be more economically advanced and hence highly integrated with other areas; and they also tend to include within them large metropolitan areas which in turn tend often to be multistate. (2) Properties of debt. Countercyclical fiscal policy requires the use of debt finance, and federal debt differs in three important respects from municipal debt. First, federal debt tends to be *internal* (Federal obligations are owned within the jurisdiction of the United States), where municipal debt tends to be external (obligations owned outside of the issuing jurisdiction.) The significance of this difference, in turn, is that when a debt is external, interest payments and principal repayments are a real burden to the debtor jurisdiction, requiring a transfer of resources to others outside the jurisdiction, whereas with internal debt, interest and principal payments are merely redistributive and not resource-using. Moreover, interest costs are affected (via credit ratings) by the extent of indebtedness, for states and localities, but not for the federal government. And finally, only the federal government can be completely assured of its ability to service and repay its debt, since it has the power to monetize the debt, either indirectly through the Federal Reserve System or directly through "printing money." (3) Security. Only the federal government can be reasonably sure that, by undertaking anti-cyclical deficit-financed expenditures, it will be able to raise employment and income, and thereby assure the existence of a strong base for income and other taxation to service and repay the debt. States and localities run the risk, by contrast, that in spite of their efforts the downturn may continue or even worsen, meaning a greater real debt burden imposed upon a shrinking revenue base.

unit's share of total state-local own-raised revenues weighted by the cyclical income elasticities of the revenue sources used. That is,

$$G_i = \frac{\sum_j e_j R_{ji}}{\sum_j \sum_i e_j R_{ji}} T \text{ where}$$

G_i = grant to ith state or local government unit, in dollars;
e_j = short-run (cyclical) income elasticity of the jth tax type (income, property, sales, etc.), computed nationally;
R_{ji} = the ith state or local government unit's total revenue yield in the last previous three successive years of sub-5% unemployment from revenue source j; and
T = the aggregate amount to be distributed, determined separately (exogenously).

For instance, assume a locality has raised a sum of $1,500 million in revenues in the previous three years, consisting of $750 million in property taxes with a short-run elasticity (let us assume) of 0.2, $250 million in sales taxes with an assumed elasticity of 1.0, $250 million in payroll taxes with an assumed elasticity of 1.5, and $250 million in nontax revenues, with an assumed elasticity of 0. Its weighted total revenue would be

0.5 times $750 million equals $375 million.
1.0 times $250 million equals $250 million.
1.5 times $250 million equals $375 million.
0 times $250 million equals $0 million.
Total $1,000 million.

Other units' revenues would be similarly weighted, and all of the weighted revenues summed. Each proportion of the total RSG (T) would be its proportion of the sum of weighted revenues.

The result is that units with little reliance on cyclically sensitive taxes would receive little in grants; those with greater reliance on them would be compensated.

A possibly simpler alternative method would be to make separate estimates of the total revenue lost by all units from each major revenue source. That is, estimate state and local total revenue loss from, separately, income taxes, sales taxes, property taxes, etc. Then allocate each total according to each unit's relative use of that revenue source in the previous three-year period. That is,

$$G_i = \sum_j G_{ij}$$

$$G_{ij} = \frac{R_{ij}}{\sum_i R_{ij}} T_j \text{ and}$$

T = the total amount to be distributed for the jth source, determined in aggregate separately (exogenously) for each revenue source.

FINANCING RSG'S

A question remains concerning the appropriate method of financing RSG's. The main questions are whether they should be funded through ordinary Congressional appropriations (implying reliance on general revenues), or whether a trust fund should be established, and if so, through use of what revenues.

There are a number of advantages to the use of trust funds. They could provide for prompt, virtually automatic payment—certainly a desideratum where anticyclical action is concerned. Moreover, since one objective is that government units behave *as if* full-employment revenues were assured, certainty is an important characteristic of the system. State and local executives and legislators will be more reassured by an amply endowed trust fund than by statutory authorization unfunded by appropriations.

One other potential benefit could accrue from the use of a trust fund. The trust fund's surpluses in years of unemployment under five percent could have a desirable restraining effect upon the economy, depending upon Congressional and executive behavior.

An effort should be made to assure that trust fund balances are sufficient not to be depleted in the midst of a sharp recession. As additional protection, the trust fund should be empowered to borrow from the Treasury.

If a trust fund is used, how should it be financed? There is no reason, as there is in the Heller-Pechman-Nixon proposals, to make the financing technique insensitive to the business cycle. Indeed, a technique which provides for trust fund receipts to vary positively with the general level of economic activity would seem desirable. Two possible techniques would be to set aside a fixed percentage of federal revenues, or to set aside a fixed percentage of combined state and local revenue. By the latter we do not mean that state and local revenues would be used to fund the trust fund, but rather that the federal treasury would set aside an amount computed by reference to state and local revenues. (There might be a temptation to draw an analogy to unemployment insurance and "tax" states and localities to finance the trust fund, but such an approach ignores the federal responsibility for guaranteeing full employment, and consequently full employment revenues.)

The amounts involved are not large. If Congress would provide an initial appropriation of $6 billion, annual increases of $1.5 billion (or about one percent of state and local revenues) would be sufficient to keep a one-recession minimum balance, assuming four years between recessions to restore balances. The amounts could, of course, be modified as experience dictates.

One final comment concerning trust funds is appropriate. For a number of years, reformers have urged a more prompt and flexible set of discretionary fiscal policy tools. For reasons of timeliness and neutrality, they have concentrated their proposals on the tax side, advocating variations of "formule-flexibility" or formula-triggered executive discretion over tax rates. Congress, jealous of its constitutional taxing powers, has not been interested in ceding any of them, either to the president or to a computer.

Advocates of such reform would be well-advised to look as we have into the trust fund device. Unemployment rates and/or other series could be used to unlock the fund for use for transfer or resource using expenditure, or even to trigger tax rebates, or for a variety of other possible uses. Surely a better technique could be found in the trust fund device than the recent depreciation-rule changes made by the executive branch for similar purposes.

ESTIMATED REVENUE LOSSES

Simple, preliminary estimates of cyclical state and local revenue losses are provided in Table I. We have used others' estimates of the income-elasticity of state and local revenue systems and of potential GNP (at four percent unemployed).

TABLE I.—ESTIMATES OF CYCLICAL STATE AND LOCAL GOVERNMENT REVENUE LOSSES (QUARTERS IN WHICH THE NATIONAL UNEMPLOYMENT RATE EXCEEDED 5 PERCENT)

[Billions of Dollars]

Quarter	Medium elasticity estimate	Low elasticity estimate
49–II	0.2526	0.2242
49–III	.2611	.2321
49–IV	.3515	.3121
50–I	.1809	.1604
50–II	.1174	.1041
54–I	.2293	.2023
54–II	.2998	.2646
54–III	.2784	.2458
54–IV	.2077	.1834
58–I	.8461	.7497
58–II	.9158	.8117
58–III	.7659	.6791
58–IV	.6547	.5805
59–I	.5961	.5286
59–II	.4508	.3995
59–III	.6748	.5989
59–IV	.6425	.5703
60–I	.5289	.4696
60–II	.6662	.5915
60–III	.8408	.7469
60–IV	1.0362	.9207
61–I	1.2044	1.0705
61–II	1.0735	.9544
61–III	.9721	.8644
61–IV	.8484	.7545
62–I	.7895	.7024
62–II	.7010	.6237
62–III	.6826	.6060
62–IV	.6963	.6199
63–I	.7667	.6828
63–II	.7865	.7006
63–III	.6979	.6219
63–IV	.6595	.5878
64–I	.5714	.5093
64–II	.5132	.4576
64–III	.5102	.4551
64–IV	.5630	.5024

Note: Federal State Coordination of Personal Income Taxes. Report A–27, Advisory Commission on Intergovernmental Relations, October 1964 p. 43. Actual and potential GNP estimates were obtained from "Technical Notes for Estimates of the High Employment Budget" unpublished memo prepared by The Federal Reserve Bank of St. Louis, September, 1970. Table 1, quarterly estimates of State and local government revenues were made available by the U.S. Office of Management and Budget through the courtesy of Charles M. Mohan.

The method used was to multiply the difference between potential and actual GNP by the product of the income elasticity estimate and the current actual ratio of state and local taxes to GNP.

The cumulative revenue losses over a full cycle appear to lie in a range below $6–7 billion. Data are not available on the current recession, but casual evidence suggests that revenue losses may exceed this range.

Indeed, it was the severity of the present state and local fiscal crisis that prompted the present proposal. Recession-induced revenue shortfalls are not, of course, the only factor responsible for the crisis, but they are a major factor, and in our opinion an avoidable one. That being the case, it is all the more regrettable that these government units have engaged in such inefficient and inequitable behavior. Our hope is that they need not do so again.

SCHOOL BUSING

Mr. CASE. Mr. President, like many other Senators, I have received a great deal of correspondence recently on the subject of school busing. I ask unanimous consent that a statement of my position of this issue be printed in the RECORD.

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

STATEMENT BY SENATOR CLIFFORD P. CASE ON SCHOOL BUSING

From the beginning, I have been a strong supporter of the 1954 decision of the U.S. Supreme Court in the Brown case and of the school desegregation progress that has been made as a result of that decision. I continue to hold that position.

I also have made it emphatically clear that I believe that all desegregation plans and programs, whether or not busing is involved, must not place any children, white or black, in situations in which they would be in danger of personal harm or harrassment, or in which they would get an inferior education.

Each of these objectives must be—and can be—met.

In line with the foregoing, I strongly favor the system of neighborhood schools. But I agree with Chief Justice Burger of the Supreme Court that busing may be necessary in some cases.

I believe local school boards must be given

a full range of options from which they can pick the method of desegregation best suited to their individual circumstances. The best method for one district may not be the best at all for another.

School superintendents, however, face a difficult task and we in the Congress should give them all of the guidance and assistance we can.

In this connection, I have supported legislation, such as the Mansfield-Scott amendment recently approved by the Senate, that would write into statutory law the limitations of busing laid down by the Supreme Court in its decision in Swann v. Charlotte-Mecklenburg Board of Education. These limitations would prohibit busing that would endanger the health or safety of a child or that would impinge on the educational process.

I oppose busing in situations where it hurts children, or where it hurts their education. It is high quality education for all children that we are all seeking.

In situations where busing and other means cannot effectively desegregate the schools while still protecting the quality of education and the safety of the pupils, I believe that additional resources must be devoted to improving the quality of the schools to provide all children with an equal educational opportunity.

I long have been a supporter of Title I of the Elementary and Secondary Education Act, which is specifically designed to provide special federal assistance to educationally disadvantaged children, and year after year I have worked as a member of the Senate Appropriations Committee for additional funds for this program.

In addition, I am a co-sponsor of a Senate-approved School Desegregation Assistance Bill that would provide special Federal aid to help improve racially and ethnically isolated schools.

In my view, the education of our children is the best investment we can make in the future of our country.

THE NEW AMERICAN POPULISM: A BACKLASH AT ECONOMIC ELITISM

Mr. MOSS. Mr. President, George Wallace's overwhelming victory in the Florida presidential primary has forced many political analysts to rethink their ideas about voter sentiment in 1972. It now appears that many Americans are ready and willing to register a resounding protest at the direction our country has been taking over the past few years.

To dismiss the large Wallace vote as mere racial "backlash" would be a serious miscalculation. In a wide variety of areas, people are, in the words of the Alabama governor, "fed up" with a Government which appears to identify so entirely with the interests of an economic elite.

It is not hard to understand the average voter's sense of frustration. A few days ago on the Senate floor it was reported that in 1968 the middle income worker making $8,000 to $10,000 paid Federal, State, and local taxes at the same rate as the worker earning $25,000 to $50,000. Only last week it was made public that 112 wealthy citizens, whose annual incomes exceeded $200,000 in 1970, paid no Federal income tax whatsoever.

This news of flagrant tax inequities followed upon the heels of a Joint Economic Committee released study showing that the economic gap between the lower one-fifth of our society and the upper one-fifth has almost doubled during the past 20 years. Together with recent disclosures concerning the "ITT case," it now appears that Government policy actually supports the growing chasm between rich America and poor America.

Mr. President, I contend that if there is indeed a backlash vote in 1972, there are many sound reasons for it. It is a backlash by moderate and low income taxpayers at a system which represents the interests of an economic elite;

A backlash by the workingman and woman at national policies, based upon a governing philosophy that what is good for big corporations is good for America;

A backlash by the consumer and small businessman at the alarming growth of giant conglomerates, whose power to set prices and control markets makes a mockery of competitive, free enterprise;

Moreover, it is a backlash by the average citizen at the enormous political clout of a privileged group of corporate executives.

Mr. President, today I would like to cite just one example of the elitist mentality that has been shaping national policy over the past few years. I believe it offers a cogent demonstration of how the Government has been encouraging the economic polarization of our society.

Two years ago it was generally agreed that the Government should take action to alleviate the Nation's worsening unemployment situation.

What did the President choose to do? He appointed a special Task Force on Business Taxation and instructed the group to find ways of helping the business firms to expand.

In September of 1970, the task force reported a number of suggestions all aimed at offering massive tax breaks to corporations.

The President began quickly to implement the task force program. Early in 1971, the Treasury Department announced new regulations permitting business firms to write off capital costs over periods 20 percent shorter than their guideline useful lives. This proposal would cut real corporate taxes by $35 billion over the next decade.

Last August, the President took up the next task force proposal: a system of specially created tax shelters, called DISC's, for firms involved in the export business. More millions were lost to the Treasury.

Only recently the President announced his consideration of a new regressive value-added or national sales tax, a $16 billion program which the task force recommended in the event of the need for new taxes.

Every one of these proposals shifts the tax burden from the corporation onto the individual consumer. They all operate on the implicit assumption, one shared by the President, that what is good for big business is good for America.

This "trickle down" philosophy has governed national policymaking ever since the present administration came to office. It has been the guiding rationale behind the President's vetoes of the Manpower Act of 1970, the Accelerated Public Works Act of 1971 and his decision to cut Federal employment levels by 150,000. According to current elitist economic philosophy, public employment programs, which assist those at the bottom of the economic pile, are dismissed out of hand. It is no wonder that many people feel that Government in 1972 owes its first loyalty to the economically powerful.

LADY VOLUNTEERS MAKE RED CROSS POWERFUL AND CONSTRUCTIVE—FROM NATIONAL BOARD TO LOCAL CHAPTERS

Mr. COOK. Mr. President, distinguished and bright American women are making the American Red Cross one of the most constructive organizations for the 1970's. The National Board of Governors of the American Red Cross now has on it some very forward looking, articulate ladies, such as Sylvia Porter, whose column about the work of the Red Cross as it appeared in hundreds of newspapers across this country appears below. Miss Porter's economic advice and comments are followed closely by men and women alike, and she is widely regarded as one of the most powerful writers active today.

I am glad that the Red Cross has now recognized that the future of America as well as the continued growth and modernization of Red Cross itself, demand on the national policymaking board full voting representatives of young men and women who already have made major contributions in their hometown Red Cross chapter. Miss Elaine "Cissy" Musselman, of Louisville, Ky., is one of the youngest and most active members on the Red Cross board, and I am delighted they have selected one of Kentucky's finest.

As the American Red Cross faces new opportunities and some very serious challenges at its April-May San Francisco convention, I am glad that Miss Porter has outlined for her readers what volunteers can do. I am especially proud that a Kentucky leader like Miss Cissy Musselman will be right in the forefront of the new approaches that the American Red Cross needs and will be adopting.

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:

[From the Washington Evening Star, Mar. 8, 1972]

UNSUNG VOLUNTEERS PRODUCE

(By Sylvia Porter)

Across the land are 1,827,600 who are working as American Red Cross trained volunteers in community activities—in the blood and youth programs, in safety, nursing and health programs, in hospitals, clinics, disaster relief, in helping members of the armed forces and their families, and in raising funds to support all these services.

On average, you are putting in 150 hours a year at those jobs. But that's just average: many are putting in 150 hours a month. Many certainly are contributing twice, three, four times 150 hours a year.

All of you give time, training, devotion and dedication for zero pay in dollars. All of you fall into one of the enormous categories of nonpaid producers in the U.S. economy. On top of this, hundreds of thousands also contribute cash and property.

If you were paid merely $2 an hour—and the minimum wage is to go to this level in 1972—your contribution of only 150 hours a year would amount to an annual output of $548,280,000, an impressive sum by any yardstick.

If you were paid what your skills—as a nurse, a first aid or swimming instructor, a teacher—could easily bring in the job market your contribution of only 150 hours a year would easily mount to $1 billion or more. And if there were a more accurate estimate of the number of hours you actually work, the total would go zooming again—would add billions of dollars to our annual output of goods and services, give a far more realistic picture of our true Gross National Product.

"The volunteers who impress me most are the seemingly invisible ones who show up whenever a disaster strikes at the closest local level—such as a fire in a tenement house or multifamily dwelling," said James H. Evans, president of Union Pacific and a member of the board of governors of the American Red Cross, during a luncheon break at a recent board meeting in Washington. "The firemen, the policemen, all the rest of these essential workers are there. This is their job and they are paid for it. But the volunteers who offer food, clothing and shelter to thousands who have literally no place else to turn—no one pays them, no one ever mentions them. Yet they are always there."

"The usual point economists make is how much greater our GNP would be if we did put a dollar tag on the contribution of the unpaid worker," added William McChesney Martin, former chairman of the Federal Reserve Board and also a governor of the Red Cross. "But has anyone ever figured out how much smaller this figure would be if we didn't have such producers as the Red Cross volunteers? How many vastly productive lives have been protected by the blood program, for instance—saved to produce, earn, add to the GNP? How many billions of dollars have been added to our total output by the countless numbers of people protected by Red Cross safety programs, first aid, disaster relief, health education? If we can't put an exact figure on it, we certainly can agree GNP would be many billions of dollars smaller!"

"Now comes the entrance of the Red Cross volunteer first-aid instructor into the business world to help employers meet the standards of the new Occupational Safety and Health Act," George Elsey, president of the Red Cross, followed up. "By using the new Red Cross multimedia system of teaching first aid, companies from coast to coast will be able to slash the time they must allot to first-aid training in complying with the law. This contribution too will run into hundreds of millions of dollars—all uncounted."

Of course the contribution of the volunteers goes far beyond this. As of the start of 1972, there were more than 43,000,000 volunteers working for 22 national agencies in the United States. Put a dollar total on the production, I defy you!

But because I have been so close to the Red Cross in the last few years, I have had a unique chance to see how its volunteers work. And I haven't included in the volunteer total the 2,319,800 who donated blood last year or the 6,576,200 students participating in the Red Cross programs in schools.

The economic story of the volunteer in America never has been told—and perhaps it never can be. But just because we cannot put a precise dollar tag on the volunteer's contribution we must not downgrade the magnificent size of that contribution.

BUSING

Mr. CRANSTON. Mr. President, there is substantial concern in California about the problems involved in using busing to end segregated public schools. The President's recent nationally televised speech on busing has not really clarified the issue. Hundreds of Californians have written to me about their concerns with the uncertainties in our national policy on school desegregation and their desire for the best education for their children.

I, too, am concerned about this difficult issue. I am deeply involved in the effort to find a wise solution.

Here is what I am for and working for, and what I am against and working against.

I helped lead the recent fight in the Senate for the successful Scott-Mansfield amendment that would prevent busing children for so long a distance and so great a time that it would risk their health and endanger the quality of their education. This amendment would also delay the effective date of the most disruptive court orders until they can be fully reviewed as to their constitutionality.

I have joined, too, in sponsoring a measure that would actually add $2.5 billion to improve education in those schools where improvement is most needed.

The President has called for spending $2.5 billion to improve our schools. It turned out, however, that he did not mean we should spend that much more money on education. He just meant we should transfer $2.5 billion from programs already underway or planned.

I will also do all I can to develop better ways than busing to improve education for all children and to end segregation. I believe busing should be viewed as a last resort, because it is the least desirable method of ending segregation and improving education. There are many better possibilities. As a start we must devote more money to bolster schools that need help. Other actions we should try include locating new schools where they will be integrated without busing, redrawing of district lines, greater use of the cluster school concept, educational parks, and community directed private schools. Still other ways are being explored and considered.

I believe, as President Nixon says he believes, that you cannot have both segregation and good education. In his March 24 press conference, President Nixon said "I agree" with the Supreme Court argument in Brown against Board of Education in 1954 that legally segregated education is inherently inferior education. Since that is the President's stated view, I cannot understand why he chose to attack the courts and to add to the atmosphere of antagonism toward our judiciary which has been a most unfortunate consequence of the busing debate.

The Supreme Court has never ruled that schools must be "racially balanced." It has ruled only that schools must be free of segregation imposed by local school boards or by other instruments of government.

Just last year a unanimous Court, led by President Nixon's choice as Chief Justice, Warren E. Burger, and joined by Justice Harry A. Blackmun, President Nixon's only other nominee sitting on the Court at the time, held that a reasonable program of busing can be a necessary and feasible tool for ending discrimination. They made this decision as the "strict constructionists" President Nixon knew them to be when he nominated them to the Court. Now, when the President finds that even Justices he appoints will not make decisions the way he would like them to, he proposes to take the right to make decisions out of the hands of the Court. This approach threatens the fundamental constitutional principle of separation of powers in our society, and threatens the very processes we have established to govern ourselves. If we start obeying court orders only when we like the orders, and try to take away from the courts their right to make decisions we do not like, we will be heading toward a breakdown of law, order, and justice in America.

The legislation proposed by the President creates substantial national uncertainty because there is widespread doubt whether the President's proposal is constitutional. If we pass the President's proposal and then it is found to be in violation of the Constitution—as many people believe it will be—we will be right back where we started with nothing solved and nothing accomplished.

The President's proposal might stop some busing, but it would by no means stop all busing ordered by the courts. The effect on California communities would be contradictory and irrational. Under the President's proposal, the San Francisco Board of Education, for example, would be prevented from transferring students now being bused long distances to schools closer to their homes. The President's proposal would also prevent the San Francisco Board from reducing the total number of students now being bused if their new plan means busing even one child not now being bused. At the same time, the President's proposal would have no effect whatsoever on busing in Los Angeles, if the pending appeal against the present court order there is turned down.

In short, the President has not come up with an easy, simple, immediate, or good answer. In fact he has not come up with any answer at all, and his proposal is opposed by Senators and Representatives from the North and South alike, regardless of their individual views on busing. The inconsistencies, uncertainties, and contradictions of the President's proposal have only added to the confusion and misunderstanding which are keeping us from a solution to the busing problem.

I am in the thick of the effort to resolve this matter, since I have been appointed to the Senate-House Conference Committee that will try to reach common ground for a reasonable approach to busing, and I am a member of the Education Subcommittee, which is considering the President's legislation and alternatives to it.

I will do all I can to help to reconcile the differences and to come to grips with this important issue fairly and effectively.

I cannot believe that fair-minded men

and women of good will can not come up with an equitable solution to a problem we all want to solve: how to give all our children—no matter what their color or the income of their parents—a good, quality education.

I believe that most Americans believe in equal opportunity, and that they know that means not separation and segregation, but living together in one Nation in brotherhood and understanding.

TWO DISTINGUISHED NEW YORK CITIZENS: EARLE WILLIAMS AND JACK ROSEN

Mr. BUCKLEY. Mr. President, I invite attention to the accomplishments of two distinguished citizens from New York, Mr. Earle Williams, of New Rochelle, and Mr. Jack Rosen, of Brooklyn. Both men have unselfishly devoted their talents to aiding the handicapped and underprivileged, and also our men in the service.

Mr. Williams has embarked on a career of writing letters to servicemen that has now spanned 5 years and included over 5,000 letters. He got his start in 1967, when he wrote to his nephew in Danang, South Vietnam. Since then he has written to servicemen in Thailand, Vietnam, Japan, and even the United States. He averages almost 45 letters a week and they vary in length from two to four pages, or more.

Mr. Williams' exploits are made even more extraordinary when one considers that he has been totally confined to his home due to disability since 1967. Instead of withdrawing himself from activity, Mr. Williams has remained cheerful and industrious, performing a needed service for men away from home.

Mr. Rosen also uses his talents with a pen to ease the serviceman's burden. In 40 years, the world's fastest artist has completed over 100,000 caricatures, many of them being of wounded war veterans. Mr. Rosen has traveled to Vietnam at the request of our Government and has cheered countless servicemen with his drawings. In addition to his foreign travels, Mr. Rosen has visited many New York veterans hospitals, where he has lent his talents by helping to ease the hardships of wounded men.

In the future, Mr. Rosen hopes to continue his travels to veterans hospitals and visits to disabled children.

Mr. President, I again wish to commend these two gentlemen for their tireless efforts to remember those who have given so much of themselves in service to others.

THE NEED FOR A COMPREHENSIVE NUCLEAR TEST BAN TREATY

Mr. MOSS. Mr. President, the United States bears the major responsibility for controlling the effects of nuclear weapons. We introduced this new technology to the world: we should be the first to adopt proper controls on its use.

For this reason, I have decided to join Senator KENNEDY in cosponsoring Senate Resolution 230, a resolution to encourage a moratorium on underground nuclear weapons testing and to promote negotiations for a comprehensive test ban treaty. I do this after careful consideration—and I emphasize the need for care and caution in pressing for such historical changes. It appears to me that the technological advances in seismology have made on-site inspection unnecessary. The issue of inspection has been the chief stumbling block for the Soviet Union in all of our negotiations on such a test band.

The belief that a feasible underground test ban, coupled with the present atmospheric test ban, is now practical was recently announced by a panel of scientists at a conference of the Advanced Researched Project Agency of the Department of Defense.

Americans should understand that we have a great deal to lose if a comprehensive test ban is not soon adopted. The most threatening development in the field of nuclear weapons would be the development of a small, cheap nuclear bomb—one that many nations could afford. If this kind of proliferation occurs, then the management of nuclear weapons will become extremely difficult. It is to the advantage of all nations that the nuclear weapon's club remain small.

A complete test ban would slow the arms race, save scarce resources that are necessary for other defense programs and for domestic purposes, and would reduce the pollution that accompanies even carefully controlled underground tests.

Senate Resolution 230 simply calls for a moratorium on underground testing while negotiations go forward on a comprehensive treaty.

Clearly the benefits of such action outweigh any possible disadvantages. Mr. President, I urge that the Senate move quickly to adopt this resolution and that the Government move equally responsively to implement its intent.

THE NEED FOR EXECUTIVE REORGANIZATION

Mr. GRIFFIN. Mr. President, on behalf of the distinguished Senator from Illinois, I ask unanimous consent to have printed in the RECORD a statement by him and insertions on the subject of the need for executive reorganization.

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

STATEMENT BY SENATOR PERCY

The President very appropriately asked the Houses of Congress yesterday, in a special message, to get on with the job of restructuring and modernizing the major Executive Departments by reorganizing them along the lines presented in his March, 1971, Executive Reorganization proposals.

In the Senate this program of restructuring was introduced as four bills: S. 1430, to create a Department of Community Development; S. 1431, to create a Department of Natural Resources; S. 1432, to create a Department of Human Resources; and S. 1433, to create a Department of Economic Affairs.

The President's message was timely. It was made almost exactly on the anniversary of the submission of his major reorganization message on March 25 last year. In the interim there has been action in both Houses. In the Senate, the Chairman of the Government Operations Committee, Senator McClellan, and the Chairman of the Subcommittee on Executive Reorganization, Senator Ribicoff, have, between them, presided at 7 days of hearings on the Department of Community Development. I have joined the President in urging that the hearings be completed. The House is to be commended for its vigorous activity. I think we can anticipate House passage of a well-prepared measure creating a Department of Community Development. I will do all that I can, as chief sponsor of the legislation in the Senate and ranking minority member of the Government Operations Committee, to promote these hearings.

The need for this reorganization is underscored by David Broder in his column in the Washington Post of March 14. Mr. Broder comments on the recent annual report of the Advisory Commission on Intergovernmental Relations titled "The Crisis Continues." This report presents a grim picture of a Federal structure that is failing because of the failure of the Nation's leaders to undertake needed programs of reform, including executive reorganization, solutions of the problem of local government financing, among others.

Mr. Broder writes that we "ignore these problems at our peril." The reason, he says, is that it is "just this kind of charade—much talk, little action—that has diminished the credibility of government in America and made so many citizens cynical of finding political solutions for the problems in their lives." Mr. Broder adds that President Nixon has proposed initiatives in almost all these areas, but that they have been blocked or ignored, for the most part, by a Democratic Congress.

It is in this perspective that I think we can read an editorial in the New York Times on March 29, regarding Administration's program for the cities. The editorial compliments the Secretary of Housing and Urban Development, George Romney, for his ability and integrity, but scores the Administration for a failure to back up this very distinguished and able leader with a comprehensive policy for urban America. I submit that enactment of the Department of Community Development proposal would go very far to put in the hands of one chief executive all of the policy and program tools he would need to fashion such a comprehensive policy, and to back it with well-conceived programs and with money. The Times, which I am very pleased to say has editorially supported the President's executive reorganization program, should consider that enactment of S. 1430, an Administration initiative, would do much to fill the need it so vigorously describes.

[From the Washington Post, Mar. 14, 1972]

THE CRISIS CONTINUES

(By David S. Broder)

For a government document, it is rather gaudy. The cover is printed on flaming red stock, and the title, in bright yellow print, splitting a black map of the United States into two jagged pieces, reads: "The Crisis Continues."

But for all these theatrical devices, it's doubtful that the 13th annual report of the Advisory Commission on Intergovernmental Relations will attract much attention from the presidential candidates, or that its message will become part of the political dialogue of 1972.

The reason is simple: The problems it outlines are almost too tough and too consequential for any politician to find comfortable. Yet they are problems we ignore at our peril.

The ACIR was set up in the Eisenhower administration, as a permanent, bipartisan body designed to monitor the health of the federal system and make recommendations for its improvement. Its current chairman is

a liberal Chicago Republican, Robert E. Merriam, and its members include two other private citizens and representatives of both branches of Congress, the Executive Branch, governors, mayors, state legislators and county officials.

Over the years, the commission's small but exceptionally able staff has turned out a series of reports providing most of our information about what is happening in the financing and structure of government at all three levels of the federal system. And each year, in its annual report, it gives a remarkably candid appraisal of the progress—or lack thereof in dealing with the problems of the American system of government.

This past year, the report says, "was a lean year for American federalism." There was lots of talk—about revenue-sharing, welfare reform, reorganization of government, finding new sources of school finance—but very little action.

"Few years in this century have witnessed as much political, popular and academic discussion of American federalism as 1971," the report notes. "But despite the heavy volume of speeches, debates, messages, bills, resolutions and research relating to intergovernmental questions, the crisis in federalism continues unabated."

What difference does it make? Well, it is just this kind of charade—much talk, little action—that has diminished the credibility of government in America and made so many citizens cynical of finding political solutions for the problems in their lives.

It so happens that the problems which ACIR has been grappling are the central problems of American life, as this excerpt from the report makes clear:

"The basic causes of cleavage in our social and governmental system can be found in metropolitan areas that are fragmented . . . in growing fiscal, social and racial disparities among local jurisdictions in those areas; in widening, population, economic and opportunity gaps between urban and rural America; in a growing but uneven state involvement in local affairs . . ."

Add to these the "multiplication of federal assistance programs, with a parallel proliferation of management difficulties; the counting ambivalance of the federal government on the question of its real role in our nation's metropolitan areas; and the prospect of a future population growth mostly slated for those metropolitan areas," and you have what the ACIR rightly calls "the real challenges to statesmanship at all levels."

Why has there been no significant action on these problems? President Nixon has proposed initiatives in almost all these areas, but they have been blocked or ignored, for the most part, by a Democratic Congress. But if the partisan split between the branches of the federal government explains the inactions, it does not excuse it. As the ACIR points out, a Democratic governor and Conservative (Republican) legislature in Minnesota last year made landmark progress in dealing with similar problems on the state level.

What we confront in the nation is a failure of political leadership in both parties to focus attention on these critical problems. The failure is continuing in the present presidential campaign. It is a failure we tolerate only at our peril.

[From the New York Times, Mar. 29, 1972]

MISSING: ONE POLICY

During his three years as Secretary of Housing and Urban Development, George W. Romney has tried without success to evolve an Administration policy for the cities and their suburbs. The other day in Detroit he rhetorically threw up his hands and said the job was too big for the Federal Government. Nothing that Washington could do, he suggested, would halt the terrible slide of inner-city housing into slums.

The problem is certainly too big for this Administration; and the responsibility for its non-performance lies not with Mr. Romney but with President Nixon. Secretary Romney has put forward several initiatives with engaging acronyms, elaborate supporting documentation and ambitious timetables for specific action. Each has been shredded and lost in the White House policy-coordinating machine. The input has been sizable; the output zero.

Mr. Romney even has a mausoleum of words to commemorate his own frustration. In the Housing Act of 1970, Congress required that in every even-numbered year the President should submit to Congress a "Report on Urban Growth." Last month President Nixon submitted the first of these reports. If the Congressional authors of this idea thought they would get an authoritative summing-up of information and legislative recommendations on behalf of the cities—comparable to the annual reports from the Council of Economic Advisers and the Council on Environmental Quality—they must be as sorely disappointed as Mr. Romney.

This vapid document spends 74 pages explaining that the Federal Goverment really cannot do much of anything about urban problems or suburban growth. The fragmented and inadequate authority of other levels of Government has been amply demonstrated, but the report passes the responsibility back to them: "any consideration of growth issues must recognize that many of these issues fall within the boundaries of state and local governments."

With an air of bustling discovery, the report states: "Ours is a Federal system with powers shared between the states and national Government. This system preserves the ability of citizens to have a major voice in determining policies that most directly affect them."

The "major voice," one is tempted to ask, that citizens have in the interstate highway program? Or in the lending policies of the Federal Housing Administration? Or in the Administration's impounding of water and sewer grants? Or in Federal Government failure to finance urban mass transit? These are only four of the many Washington decisions to act or not act which have had enormous influence on urban decay and development. No town or city or county can singly cope with the consequences of these Federal decisions.

President Nixon solemnly proclaims in this report that he has no "master plan for directing the multitude of public and private decisions that determine the patterns of progress in modern America."

No one expected him to have a "master plan." But citizens and local officials could reasonably look for some leadership, some guidance on alternatives, and some greater coherence in the Federal Government's own policies. Metropolitan and regional planning are essential, and the financial power of the Federal Government is the best available lever to compel local, county and state officials to take a broader view of their problems and to cooperate more effectively with one another. Mr. Romney's pessimism notwithstanding, only such Federal leadership can make federalism a viable form of government under complex modern conditions.

There is no mystery about the Administration's evasion of this crucial responsibility. President Nixon has political strength in very few of the inner cities. Action on any metropolitan-wide problem—housing, transportation, economic development—is sure to upset some voters and some interest groups in the suburbs. Silence is the politically safest course. If something absolutely has to be said—as in this report on urban growth—then question-begging platitudes are the next safest. The only mystery is why George Romney, a man of integrity and social concern, continues to cooperate in this great vanishing act.

ECONOMIC CONTROLS ON BEEF

Mr. ALLEN. Mr. President, it seems incredible to me that some people in a country that has attained affluence for so many should produce an anguished outcry when one small but vital segment of the economy gains back its income situation of 20 years ago—even though for only a short few months period.

I refer, of course, to the demands for economic controls over farm commodities—specifically beef.

Much of the agitation seems to come from so-called professional consumer groups who loudly and piously profess to speak for all families of our Nation. These groups and other special interest organizations would also have us lift all quotas on imports of meat and force a rollback of cattle prices below 20 years ago. These shrill cries from the great urban centers, where costs of living are predicated on factors beyond basic production costs, have already caused the administration to bow, in part, to their complaints by letting down the bars on foreign meat imports.

The unhappy and sad fact is that the consumer is being led down the primrose path by persons who either do not know or do not care about protecting consumer positions and consumer purchasing power. Of course, the consumer is paying a higher price for retail beef, but, as all cattlemen know, live cattle prices are not the cause of high retail beef prices as many farm critics assert.

It was only a few weeks ago that live cattle prices finally reached a price equivalent to what they were 20 years ago. I constantly point this out when the issue of high retail beef prices is put to me, together with the observation that not many—if any—segments of our economy would be satisfied with a price level of two decades ago. I do not think that the great industrial plants and business houses of America could conduct their operations if they paid their officers and employees the same rate they paid them 20 years ago.

When we closely investigate the statements of those who seek to place total blame for increased food costs on the shoulders of American farmers and ranchers, we find that they have distorted the picture by the omission of some relevant facts. For example, farm food prices have only increased 7 percent in the past 20 years. Yet, during this time, money paid to wage earners increased 340 percent; business and professional income increased 200 percent; and dividends increased 300 percent.

In addition, wholesale food prices are up 22 percent from 20 years ago and retail food prices are up 44 percent from 20 years ago. These figures are more than three times and six times as high, respectively, as the rate of increase in farm food prices.

Simply stated, Mr. President, these statistics show that the American farm producer is still not yet receiving a fair share for his vital contribution to our

economy. Anyone would be hard pressed to show from these figures that our farmers and ranchers are the cause of the inflationary spiral, particularly in the area of high food prices.

This truth was aptly pointed out in an editorial published in the Birmingham News of March 25. I ask unanimous consent that the editorial be printed in the RECORD at this point in my remarks.

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

WHAT THE FARMER RECEIVES

Some people get the notion that when the price of a can of beans or a roast moves higher, the farmer and the livestock raiser are the ones who benefit.

This is far from being so.

Farm prices, the U.S. Department of Agriculture reported recently, are up only six per cent from 20 years ago. But wholesale food prices are up 20 per cent during that span and retail prices show a 43 per cent gain.

Today's farmer receives 38 cents of the dollar consumers spend on farm-raised food. This is down from 49 cents 20 years ago.

And during that same comparative span the food bill was 23 per cent of take home pay. Today, 20 years later, it is expected to fall below 16 per cent.

While the American farmer's efficiency in producing food for the nation's dinner table has advanced at a rapid rate, so has the cost of operating farms. Everything, farm labor, equipment, supplies, land, taxes—and debt—have soared.

The next time you discover you're paying a penny or two more for a food item, make an effort to learn who is getting the increase.

Chances are heavily against the increase going to the farmer.

Mr. ALLEN. Mr. President, now joining the attack on American agriculture are certain chain food outlets which have urged housewives to buy other protein items rather than beef because they say "beef prices are too high." One such enterprise suggested that fish be substituted, yet the retail price index tells us that the cost of seafoods in recent months has increased at a faster rate than beef.

I shall have more to say about the role of the retail food stores later on in my remarks. At this time, however, I should like to bring out some further facts regarding increased meat prices.

Mr. President, it is highly informative, I think, to check on prices of two beef items enjoyed by the greatest number of our people—hamburger and chuck roasts. Since 1964 to the present, hamburger prices have moved upward to the retail market level—never downward.

Starting at around 50 cents per pound in January of 1964, the price rose to about 52 cents through 1965; in 1966 to around 55 cents; in 1967 the price remained stable inasmuch as cattle prices had dropped to much lower levels, although retail hamburger prices did not reflects that drop. In 1968 hamburger prices rose to about 57 cents; in 1969 to around 65 cents; in 1970 to around 67 cents; in 1971 up to about 70 cents; and in February of this year to 73 cents per pound.

Chuck roast was at the 57 cent level in early 1964, moving up to 59 cents at the end of that year. Since that time, the retail cost of chuck roast has risen almost monthly, reaching 84 cents at the present time.

We thus see that while live cattle prices were remaining at lower levels year after year, hamburger prices were steadily increased to about 50 percent above the 1964 period, and chuck roast prices increased almost the same per centum.

Mr. President, I think that it would be well for American meat consumers to know that at no time in the period since the August 13, 1971, Presidential freeze order to the present time were choice beef carcasses more than 5 cents per pound higher, and today the price is below the August 13 date. It is significant to point out here that the price of average cattle marketed by farmers and ranchers remained at around $29 per hundredweight from August 13, 1971, until the past 2 months when the prices rose to $31 and $32. Yet, it was during these 2 months that the great protest about retail meat prices arose, because of a 2- to 3-cents a pound increase at the farm level.

It should be pointed out that the average price for cattle sold by farmers is not the choice grade often quoted in the newspapers. Rather, the average runs consistently 5 to 6 cents a pound under choice. This is the price the farmer gets for his cattle. He cannot produce all choice meat by any means.

Another factor but generally unknown to consumers: There are five different grades within the choice category. Some stores buy the lowest quality, but still can legally call it choice. Others buy the second best, or No. 2 carcasses. Very few buy the top quality choice. Within these grades, the retail outlets have a considerable varied margin with which to work in pricing their various cuts and hamburger. Thus, in comparing the choice carcass price listed in New York, Chicago, or Omaha, the advantage is on the side of the retail store selling third, fourth, or fifth quality within the choice grade.

I think that with all the tumult and confusion which has developed in recent days over food costs, especially beef prices, one element stands out clearly. Much of the national news media and many retailers and so-called consumer spokesmen do not unduly object over price increases for TV sets, for housing, for insurance, for automobiles, for clothing. They either ignore or take for granted that inflation is a fact of life and that annual wage boosts will cover all additional costs—except at the retail food level. And when retail food prices rise, the farmers and ranchers of America are the easy scapegoats. After all, they have only a minor voice that cannot rise to be heard above the clamor of certain urban segments of our economy.

Mr. President, it is this very emotional factor which has been taken advantage of by some retail outlets, particularly certain chain food stores. They had ridden the wave of media hysteria to a nice profitable position while sympathizing with the consumer over the high cost of beef. Yet, they piously deny any part of the blame for the increase in meat prices. They seek to point the finger at the farmer as the culprit. It is the same old story—the low man on the totem pole gets the ax.

What is even more appalling is that some of these retail chain stores also seek to take advantage of their profitable positions by means of advertising schemes. One such organization is Giant Food, which has retail outlets in the District of Columbia and its environs.

The first account of Giant's advertising gimmick that I know of appeared in the trade journal Supermarket News for March 13, in an article written by Suzanne Kilgore. In an interview with the consumer adviser to the president of Giant Food, Mrs. Esther Peterson, Miss Kilgore writes that Giant was going to run a beef boycott ad just as soon as beef prices rose again.

Yet, when a squabble developed between Agriculture Secretary Earl Butz and Price Commission Chairman C. Jackson Grayson about meat prices, Giant apparently decided that this was a perfect time to cash in on its scheme and, as all of us know, last week Giant ads appeared in Washington metropolitan newspapers, suggesting that housewives buy other meats and nonmeat products instead of beef.

I ask unanimous consent that Miss Kilgore's article regarding the Giant Food antibeef advertising scheme be printed at this point in the RECORD.

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

GIANT FOOD: "DON'T BUY BEEF"

(By Suzanne Kilgore)

WASHINGTON.—In what shapes up as another "first," 94-unit Giant Food, here, is poised to advise customers not to buy the beef it sells, because the meat is overpriced.

In full-page newspaper ads, Esther Peterson, consumer advisor to Joseph Danzansky, president, will tell Giant Food customers flatly to "buy something else."

The ad originally was scheduled to run last week "but the meat market went down slightly," Peterson explained, gesturing toward a proof of the ad hung prominently on her bulletin board. "As soon as it goes up again—and it will—we'll run this ad."

Nutritional "alternatives" to be suggested by Giant include chicken, turkey, fish, eggs, cheese, beans, lentils, cereal, macaroni, spaghetti and even peanut butter.

"We did something similar to this a year ago and our meat sales were unchanged," Peterson told SN in an interview. "However, we didn't get the complaints about the prices. This ad is the kind of thing that helps people understand prices.

"The dividing line today is more between the retailer and supplier than the consumer and retailer."

This bold "don't buy" action is just one aspect of the many-faceted consumer program developing under Peterson's guidance.

FREEZE LEVELS

Just last week Giant Food found it necessary to raise prices on some private label items that were being held at freeze levels.

Any turn of the radio dial here will eventually tune in Peterson, explaining to consumers that increased costs to Giant have forced the firm to raise prices.

"There's a great deal of misunderstanding about price increases among consumers," she declared. "I think that if you tell consumers about price increases from suppliers, and about profit margins—things that I have

learned on the inside—it helps them to understand."

Giant Food, which took a real beating in the profit column after starting discount prices in August, 1970, has recovered its earnings stride.

When a District of Columbia Health Department report cited Giant's ground beef for excessive fat content recently, Peterson and Giant promptly took full-page newspaper ads advising area consumers that Giant's regulatory test for fat content was a "flop."

PERFECTLY STRAIGHT

"I am going to treat the consumers as intelligent persons and be perfectly straight with them," she explains. "I am convinced that, if you give consumers the tools and information, they'll use them. I have had a lot of good comments on that ad."

In October, 1970, after serving former President Johnson as in-house consumer adviser, Peterson accepted the consumer adviser spot at Giant. The move triggered criticism among her supporters, including organized labor, that she was "changing sides."

Since she edged into the "enemy camp" a little more than a year ago, she has been instrumental in initiating such Giant programs as unit pricing, open dating, nutritional labeling and, most recently, ingredient-percentage labeling. All have been promoted heavily by the chain, and area competitors have been prompted to follow Giant's lead.

"I can honestly say that I made consumerism popular," Peterson said with an emphatic nod. "I was able to make consumers aware that they are consumers.

"Consumerism is a good marketing tool. I love competition and I would much rather compete with quality things, instead of games, gimmicks and stamps."

HAND ON ADDITIVES

Peterson's hand has also leaned on food additives. A few months ago Giant came out with "uncolored cherries"—cherries without Red No. 2 coloring.

"I don't know whether they are out-selling the red cherries but they are doing very well," she notes.

Giant now is ready to market nitrate-nitrite-free hot dogs.

"They won't look very pretty but consumers will have the choice," Peterson says. "Where science has indicated that there may be a problem with additives, we don't know who is right—so we'll offer both.

"We want reality. I want us at Giant to outdo the Betty Furnesses and Virginia Knauers and Esther Petersons when it comes to consumer interest."

While responses to all of Giant's consumer programs has been "encouraging," Peterson is first to concede full acceptance and utilization is a long range project.

"The ones who are really excited about things like nutritional labeling and unit pricing are the younger housewives with college educations, as well as athletes from high-school-age on up," she declares.

When Esther Peterson joined Giant, she was granted a one-year leave-of-absence from the Amalgamated Clothing Workers of America, which she had served as lobbyist; "I have agreed to stay here another year and after that, I don't know. I've never had a job that was so much fun.

"I want to do more in the general merchandising area and in pharmacies. I'd like to do something about ingredient labeling of cosmetics and beauty aids."

Esther Peterson, in her role as Joseph Danzansky's energetic full-time consumer lady, is determined to make Giant Food the answer to a consumer's prayer.

Mr. ALLEN. Mr. President, this deliberate attack on the American cattle industry is selfish, reckless, and irresponsible.

For example, the article tells that when Giant Food was caught selling ground beef with excessive fat content by District of Columbia health authorities, the company used a full-page ad to declare that Giant's regulatory test for fat content was a "flop."

What is relevant, Mr. President, is that Giant did not tell the whole story. Their test was a "flop" only because they were caught in an outright violation of the law.

The simple fact is that a relatively simple electronic device tests hamburger and sausage fat content rapidly and accurately. Most States require this testing for manufactured meat products, and this testing equipment is quite standard.

We are indeed living in a time of slanted news and planted propaganda. What a shame that a huge retail food outlet with an otherwise good reputation should stoop to gross misrepresentations and half-truths to steer people's minds away from the fact that they were caught violating the law.

Mr. President, it is one thing to have the financial power and public relations departments to influence the habits of the buying public, but quite another to seek to charge farmers and ranchers with the responsibility for food cost problems when they have little or no means of countering such charges.

I deplore this practice of pitting one sector of our citizens against another for selfish economic motives without determining the real facts involved. I sincerely hope that this current flurry of unjust pointing of fingers and capitalizing on emotionalism will cease.

The morning's newspapers carry accounts of a meeting between Treasury Secretary John Connally and leading supermarket executives on yesterday. It was gratifying to note that these retail food representatives promised lower beef prices in the near future. It was disappointing to note that officials of Giant Food did not attend the meeting.

Next month, however, Chairman Grayson's Price Commission will hold hearings on high retail food prices. I would hope that officials of Giant Foods will either be asked or request to appear before the council to present their story including full documentation, on how they have been caught in a vicious cost-price squeeze insofar as beef products are concerned. I am sure it will be interesting.

EX PARTE NO. 281, ICC DENIAL

Mr. PACKWOOD. Mr. President, the Senate and the Nation should be aware of an action taken yesterday by the Interstate Commerce Commission when it denied the joint appeal of the Pacific Northwest Traffic League and the Puget Sound Traffic Association and others requesting a 30-day extension of procedural dates in a very significant railroad tariff proceeding. Ex Parte No. 281.

The railroads filed their application for an across-the-board rate increase on or about March 6 at which time the Commission set a date of May 1, 1972, for the filing of statements from shippers and consumer groups. The ICC allowed the railroads to amend their application on as late as March 17, but refused to grant the shippers and the consuming public an extra 30 days in which to prepare their statements.

On March 21, the Pacific Northwest Traffic League and the Puget Sound Traffic Association petitioned the ICC for reconsideration of the Commission's order of March 14, setting the May 1 date. The distinguished majority leader (Mr. MANSFIELD) and the senior Senator from Washington (Mr. MAGNUSON) joined me in urging the ICC to allow this 30-day extension. Our plea fell on deaf ears.

Mr. President, I want to make it perfectly clear that our request to the ICC was for an extension of time so that all parties involved might have an adequate opportunity to present the facts so that the ICC could then make a determination. I do not attempt to prejudge what that determination should be. I do feel strongly that the shippers and the consuming public is being unduly penalized. The Pacific Northwest shippers have authorized an extensive cost study dealing with transcontinental rail freight movements to and from the Pacific Northwest. It is humanly impossible to complete this detailed study prior to April 7. However, by their action yesterday, the ICC has, in effect, refused to consider the results of this important study in reaching a $500 million decision.

Mr. President, our regulatory agencies are frequently criticized as being dominated by the industries they are supposed to regulate. I would suggest that by refusing to give all parties adequate time to prepare their testimony the ICC has given credence to this charge.

This action is most distressing at a time when one of our most acute problems is the spiraling inflation. Among the items which will be most heavily penalized by the increase in freight rates are food and lumber. Both of these items are vital to our economy, and the rapid increase in food prices has been highlighted in the national press recently. The administration has pledged to hold food prices down, and on the very day that pledge was made, the ICC refused to allow shippers and the consuming public adequate time to present their case.

It is not as though the railroads have not had a rate increase recently. During the past few years, the ICC has approved six freight rate increases for the railroads. With ICC approval of the present proposal, the shipping public will be saddled with an increase of over 33 percent in just 30 months. It would seem to me that the Price Commission would have a great interest in these proposed increases.

Mr. President, I ask unanimous consent to have printed in the RECORD the following documents: Senator MAGNUSON's letter to ICC dated March 22, 1972; a copy of my telegram to ICC dated March 24, 1972; and a copy of the ICC order denying this request dated March 29, 1972.

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

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., March 22, 1972.

Hon. GEORGE M. STAFFORD,
Chairman, Interstate Commerce Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: This refers to Ex Parte 281, Increased Freight Rates and Charges, and the procedural dates established by the ICC for consideration of that case.

The past few years have seen approval by the Interstate Commerce Commission of six freight rate increases for the railroads (X–256, X–259, X–262, X–265, X–267, and an emergency increase under X–281). The ICC has presided over increases in these cases which have gone well over 40 per cent for most commodities. With ICC approval of the present proposal the shipping public will be saddled with an increase of over 33 per cent in just 30 months. The magnitude of these increases should in itself be of great concern to the Commission and even to the railroad industry which is finding itself ever less competitive with other transport modes. It certainly is of concern to the nation's shippers and many of us in the Senate.

But beyond this I am greatly worried about the impact of the across the board increases which despite ICC orders to the contrary continue to upset regional relationships in this nation. Protestations from the Pacific Northwest about the effect of these increases have as a practical matter been totally ignored by the Commission. The current rate increase proposal is even worse than the others because it would apply a higher percentage to Western shipments than to those in other parts of the country.

This is not the first time I have raised this point. Let me refer you to an October 12, 1970 letter in which I was joined by five other Senators. In that letter we pointed out, inter alia:

"Second, the Commission, despite repeated requests, has failed to require the railroads to demonstrate their cost of handling any commodity from any origin to any destination.

The Commission has rather been content to permit these increases in most instances to be applied across-the-board. (Applying to nearly all commodities and nearly all railroads.) This is particularly unfair to commodities such as lumber and grain which reportedly are already returning to the railroad in some instances as much as 236% over fully distributed costs. The whole concept of across-the-board increases penalize the long haul shippers who are paying the high rate. For instance, if a shipper is paying $3.00 per hundred weight for a typical movement and across-the-board 15% increase gives him a new rate of $3.45. A competitor who has a $1.00 rate from his origin to a typical destination would only suffer an increase of 15 cents making his rate $1.15. This means, of course, that when both shippers are going to the same market, the shipper who had the higher rate initially is now further penalized with an additional 30¢ per hundred weight per cost over his competitor."

Unfortunately what we said in the last two paragraphs of that letter is still, some 17 months later, relevant:

All of these considerations require close scrutiny. And they strongly suggest the need for an independent review. For these reasons we urge that the ICC thoroughly investigate the railroads' proposed increases and accordingly that the staff of the ICC as described above be directed to evaluate the data presented by the railroads. The Commission's obligation to the public, which includes ensuring the long range viability of the railroads, requires that at this critical hour for the railroads and the shippers that the Commission make an extraordinary effort to have before it all of the facts before making a final decision.

We wish to stress that we do not oppose railroad freight rate increases per se. But we do oppose very vigorously actions which in order to assist financially distressed railroads simultaneously provide a windfall to wealthy roads. Similarly we can see no justification for exacerbating the affects of already discriminatory rates on various commodities. We recognize that a thorough evaluation of the proposals now before you along the lines we have suggested will not be a simple matter, but we believe that the interest of the public requires that the effort be made."

The "thorough evaluation" that we felt was needed in October 1970 has not been completed and the railroads have continued to get almost everything they have asked for. The rate studies subsequently begun by the Commission (X–270 and X–271) evidence every indication of getting bogged down while rate increase cases are heard on a business as usual basis. This is true even though you stated in your form letter response to our October 1970 letter that "across-the-board increases may have the effect of increasing any disparities already inherent in the basic rate structure." And you stated that a rate structure investigation "appears essential."

While the studies have been underway, the Commission has consistently refused to allow its staff to make independent investigations of individual rate increase proposals. (Something which the staff of the CAB does routinely) If the Commission is to continuously refuse to have independent information developed by its staff than it should at least give shippers an adequate opportunity to develop sufficient information, I am in receipt of a communication signed by several shipper and governmental representatives (including a representative of the Department of Transportation, the State of Washington, the Washington State Utilities and Transportation Commission, the Oregon State Utilities and Transportation Commission, the Port of Seattle, and the Port of Tacoma) requesting that I support their petition for a 30 day extension of procedural dates in the Ex Parte 281 proceedings. Previously on March 14, 1972 the Commission turned down a petition by the Pacific Northwest Traffic League and the Puget Sound Traffic Association requesting 30 more days to prepare for this most important proceeding. One of the reasons for requesting a delay was to allow some additional time to prepare extensive cost studies dealing with transcontinental rail freight movements to/from the Pacific Northwest. This study was undertaken some time ago partially in response to the Commission's refusal to do anything about the Port relationship problems being created by its orders. I can see no reason whatsoever for denying that petition. If the railroads, after all the increases they have been allowed, can not wait another thirty days without a rate increase, then I would suspect that such an increase is not an answer to the railroads' alleged problems in any event. Further, with the anticipated improvement in the economy, the railroads may indeed not even need the increase. Now the Pacific Northwest Traffic League and the Puget Sound Traffic Association have sent a communication to the Secretary of the Commission urging reconsideration of the petition for modification of procedural dates outlined above. Mr. Chairman, I firmly believe that the Commission should grant this modest procedural request and I respectfully urge that you do so.

For your ready reference you will find enclosed a copy of the most recent communication which I have received plus a copy of the request for reconsideration.

Sincerely yours,

WARREN G. MAGNUSON,
Chairman.

MARCH 24, 1972.

Hon. GEORGE M. STAFFORD,
Chairman, Interstate Commerce Commission,
Washington, D.C.:

Respectfully request your immediate reconsideration of Puget Sound Freight Traffic Association petition for thirty day extension of time for filing statement in ex parte 281 hearings. Pacific Northwest freight rate group urgently needs additional time to properly prepare its position in this important matter. Without this extension, severe hardships will be experienced by Northwest shippers. Please advise earliest.

Senator BOB PACKWOOD, *Oregon.*

ORDER

At a General Session of the Interstate Commere Commission, held at its office in Washington, D.C., on the 28th day of March, 1972.

EX PARTE NO. 281

Increased freight rates and charges, 1972

Upon consideration of (a) a telegraphic petition, filed March 21, 1972, jointly by Pacific Northwest Traffic League and Puget Sound Traffic Association, for reconsideration of an order of the Commission, served March 14, 1972 (which order denied a requested extension of the schedule of dates established in this proceeding by our order of March 6, 1972, including sought change in the effective date of the involved tariff schedules from May 1, 1972, to June 5, 1972), (b) telegrams in support of the above petitioners filed separately by Snokist Growers Association, of Yakima Valley, Wash., Northwest Horticultural Council, Yakima, Wash., Simpson Timber Co., and jointly by Northwest Food Processors Association and Lamb-Weston, Inc., of Portland, Ore., and (c) initial telegraphic petitions for similar relief filed March 22, 1972, by Weyerhaeuser Company of Takoma, Wash., March 24, 1972, by Georgia Pacific Corp., of Portland, Ore., and March 24, 1972, by Montana State AFL–CIO, and Longview Fibre Company, of Longview, Wash.; and a joint reply thereto, filed March 27, 1972, by railroad respondents.

It appearing, That the schedule of dates set forth in said order of March 6, 1972, was established after careful weighing of interests of the carriers, shippers and general public and no sufficient reason has been shown for departing therefrom;

It is ordered, That the petitions be, and they are hereby denied.

Dated at Washington, D.C., this 28th day of March, 1972.

By the Commission.

ROBERT L. OSWALD,
Secretary.

SOIL CONSERVATION SERVICE FUNDS

Mr. CHURCH. Mr. President, recently I submitted testimony to the Agriculture Appropriations Subcommittee, calling for adequate funding for the Soil Conservation Service.

I ask unanimous consent that the testimony be printed in the RECORD.

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

FUNDS NEEDED FOR THE SOIL CONSERVATION SERVICE

Mr. Chairman, we all know of the nation's awareness that it must preserve and improve its environment. The Soil Conservation Service, our nation's principal conservation agency for private lands, recognizes the need for sound conservation practices. It has been earnestly working to improve our environment for over 30 years. President Nixon, in

his May 2 radio address, "A Salute to Agriculture," recognized the important role of the SCS when he stated:

"Another area where government should do more to provide technical assistance to farmers is that of soil and water conservation. Long before most Americans were thinking very much about the environment our farmers, our ranchers, our woodland owners were working together with government to conserve our natural resources. I believe we should now be providing more help for our dedicated corps of soil conservationists whose number has dropped sharply in the past four years.

"I am, therefore, increasing my new budget request for the Soil Conservation Service by $12 million to provide more manpower for this valuable work. I am also proposing that Federal grants for small watershed projects be increased by $28 million to a level of $105 million, and that 75 new projects be authorized."

Subsequently, Congress acted on the President's recommended increase and made some increases of its own. But, as is becoming all too often the case, some of those funds duly appropriated by Congress never reached their intended destination. The President has impounded $18 million in Soil Conservation Service funds. Thus we face a dual burden if the mandates of Congress are to be followed. First, we must determine the need and then make certain that once Congress has provided the funds to meet the need, the Executive Branch respects our will and spends the appropriated money. The power and responsibility of the nation's purse strings lies in the Congress, not in the Executive Office of the President.

Idaho is, for the most part, an agricultural state. Agriculture is, in fact, still developing in many areas of my State. The need and demand for the help offered by soil conservation districts is growing.

Though basically rural, urban centers such as Boise, Twin Falls, Pocatello, Idaho Falls, Lewiston, and Moscow are growing along with a mushrooming of recreation and vacation type developments. Basic natural resource data and careful planning are required to guide this growth and development in an orderly fashion.

Soil conservation districts have done a great deal to obtain State and local funds to help solve natural resource and community problems. However, because of manpower ceilings placed upon the SCS, personnel are not available to utilize these funds. You can readily understand why counties and states cannot hire employees to make soil surveys due to the short time nature of this employment on a local basis. In Idaho, a procedure has been developed in cooperation with the State Tax Commission for using soil survey data in making tax appraisals. The State Tax Commission is encouraging county assessors to use soil surveys. Soil surveys have been accelerated by money from counties in the amount of $75,000 to extend over a five-year period. Other counties are giving serious consideration to their needs for accelerating soil surveys for both planning and as a basis for tax assessment.

The Idaho Legislature is considering a bill this year to provide more moneys for soil surveys to the Soil Conservation Commission. Idaho soil conservation districts strongly support this legislation, but increased appropriation or other local funding for soil surveys is not the only answer to this problem. It takes people to do the job. Personnel ceilings imposed on the Service limit the number of soil scientists that can be hired, even when more money becomes available.

For example, several local governments and planning bodies, such as the Ada Development Council and the Boundary and Jefferson County Boards of Commissioners, are contributing funds for acceleration of surveys in their countries. The Soil Conservation Service has shifted soil scientists from other parts of the State to work in these counties. It's a matter of robbing Peter to pay Paul because the Service cannot hire new people to service these counties. Bonneville, Butte and Twin Falls Counties have expressed an interest to put money into soil surveys, but the SCS cannot hire additional soil scientists due to employment limitations.

The completion of soil surveys is lagging far behind the needs for soil information. Unless these surveys are accelerated, development without this vital information will continue in many parts of Idaho, resulting in costly mistakes and irreparable damage to our soil, water and human resources.

Our State has a new RC&D project encompassing the Wood River watershed and the famous Sun Valley area. Funds are needed to assure the success of this project. I need not remind you of the big job resource conservation and development projects are doing in getting local people, working together, to solve their development needs.

The small watershed program administered by SCS under the Watershed Protection and Flood Prevention Act, P.L. 566, has and will continue to have a very significant economic and environmental impact on our State. To date, five thousand watershed projects have been approved, including the Fourth of July Creek project in the vicinity of Coeur d'Alene (completed), Cedar Creek southwest of Twin Falls (completed), Montpelier Creek at Montpelier (under construction), Trail Creek at Victor (under construction), and Georgetown Creek at Georgetown (waiting funds for construction).

The Sand Creek Watershed project near Idaho Falls, on which planning is near completion, includes more than $4.7 million of Federal funds for construction. An additional $2.5 million of Federal funds will be spent for design of the structural measures, supervising the construction, and land treatment aspects of the project. Over the 10 year construction period of the project, local sponsoring organizations will expend $4.8 million for land rights and carrying out the local responsibilities in the project including $.6 million of land treatment practices.

The economic impact of the P.L. 566 watershed program is reflected by the $12 million of Federal funds that will come into the State through the six projects.

In addition to the dollar impact of these watershed projects, the land treatment and structural measures have an immediate beneficial effect on the environment and the economy in the project areas. The land treatment measures provided for will accelerate the proper use, management and conservation of the land and water resources. The land is protected from erosion, land scour, and sedimentation by these projects. Floodwaters are controlled. In addition, homes, farm buildings, state and county roads and bridges are protected, and money that would be needed for flood damage repair is available for other community improvements. The associated problems of pollution and the hazard to the health and well being of those in the flooded areas are eliminated.

Another program which is of tremendous assistance to soil conservation districts in Idaho is the snow survey program. SCS snow survey data is not only used by irrigators but is useful for almost every forecasting purpose including power, flood control, pollution control, recreation, industry and avalanche hazard forecasting.

Snow survey data in 1971 provided the basis for dramatic multiple-purpose flood control operations beginning January 1. By then it was obvious that 1971 was going to be one of the biggest snowpack years in history. Special meetings were held and news releases made to encourage lowering of reservoirs to control the floodwaters forecast to come. These actions helped avert millions of dollars of flood damage in 1971. All reservoirs started the irrigation season full or were filled after irrigation started. The isotopic snow gauge installed near Sun Valley is serving a multitude of users including recreationists who can get daily readings.

The National Association of Conservation District is requesting funding at slightly above the 1972 fiscal year appropriation level. But here again we face the problem of Executive impoundment of funds. Idaho fell far short of the manpower it planned to utilize based on the 1972 fiscal year appropriations. We lost four men to retirement, transfers, etc., and were not allowed to replace them even though the money was in our budget. Loss of these valuable employees plus the loss of anticipated additional help had a dampening effect on the soil conservation movement in Idaho.

All of this in face of the fact that Idaho soil conservation districts predict they will need 100 additional man years in our State over the amount provided them by SCS in 1972. Only two other states in the Union have predicted higher additional man hour needs than Idaho.

I agree with the National Association of Conservation Districts and urge your cooperation in passage of funding legislation at the following levels:

Soil Conservation Service—USDA

Conservation operations	$155,000,000
River basin surveys	10,743,000
Watershed planning	10,000,000
Flood prevention operations	132,066,000
Great Plains	20,000,000
Resource conservation and development projects	20,863,000
Total	348,672,000

Mr. Chairman, I hope that you will see fit to grant the Soil Conservation Service the funds so vitally needed by soil conservation districts in Idaho and throughout the United States to carry out their excellent work.

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

Mr. GRIFFIN. Mr. President, on behalf of the distinguished Senator from Florida (Mr. GURNEY), I ask unanimous consent to have printed in the RECORD a statement by him on the National Week of Concern for Prisoners of War and Missing in Action.

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

STATEMENT BY SENATOR GURNEY

On Monday, it was announced that the American troop level in Vietnam had sunk below 100,000 for the first time in six and one-half years. But as servicemen in Vietnam are getting sent home sooner and as hopes rise that the troop withdrawals may exceed the goal of 69,000 in Vietnam by May 1st, there is one group of men involved in this war for whom nothing changes. These are our prisoners of war.

As of March 11, 1972 there were 489 American servicemen listed as prisoners of war; 388 are being held in North Vietnam, 96 in South Vietnam and five in Laos. For the families of these men, there is little hope or encouragement as the Communists not only refuse to negotiate in good faith, but also refuse to release much information on our POW's or let them communicate much with the outside world. But, in a way these families are lucky—at least they know something. For the loved ones of 1,129 men who are listed as missing in action—411 in North Vietnam, 456 in South Vietnam and 262 in Laos—there is no telling whether their soldier is dead or is, in fact, an unlisted prisoner of war. For

the families of these men the wait is even more uncertain. The future more unsure.

Last year and again this year I have been a cosponsor of a resolution passed by Congress calling for a national week of concern for our POW's and MIA's in Vietnam. Therefore, I feel that it is only fitting and appropriate that, with the approach of the Easter and Passover celebrations, the President has proclaimed this week as national week of concern for the POW's. These men and their families deserve our concern, our support. We owe it to them to make every effort to secure their release as soon as possible. At the same time, we owe it to them to recognize their sacrifice and to reaffirm our commitment not to allow all their efforts and their suffering—not to mention that of 55,000 Americans who have died in Vietnam—to have been in vain.

We should also take this opportunity—this week—to express our admiration for and appreciation of the courage and strength of those men, the POW's who have suffered so much at the hands of the enemy. They deserve the respect and support of all Americans and let us hope that by demonstrating how much we care during this national week of concern, we can speed the day when they will be returned home to us with honor.

UNEMPLOYMENT

Mr. PELL. Mr. President, there are a number of ways to deal with our Nation's unemployment problem.

One method is to say the problem really is not a problem. Another method is to say that there is nothing that anyone can do about that problem anyway.

Mr. President, despite the fact that more than 5,000,000 persons are unemployed in this country and nearly 30,000 in my own State of Rhode Island, the administration seems to be using those techniques to explain its failure to deal with the unemployment problem.

Mr. President, Mrs. Alice M. Rivlin, former Assistant Secretary for Planning and Evaluation at the Department of Health, Education, and Welfare, recently examined the administration's excuses for this country's high level of unemployment.

I ask unanimous consent that Mrs. Rivlin's excellent article, published in the March 16 issue of the Washington Post be printed in the RECORD.

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

SOME QUESTIONS ABOUT THE ADMINISTRATION'S LINE: UNEMPLOYMENT AS AN ISSUE IN THE ELECTION

(By Alice M. Rivlin)

One might have expected unemployment to be among the simplest and most comprehensible issues of the election campaign. A high unemployment rate means that the economic machinery is not funtioning properly, right? That's bad for the incumbents, because they are in charge of keeping the machine running. What could be simpler than that?

But to no one's surprise the administration does not see it this way and has launched a multi-pronged verbal onslaught designed to diffuse the unemployment issue and make it a lot more complicated. The administration's argument reminds one of the old story about the man who returns a borrowed pot to the owner with the statement: I deny that it is broken; anyway, it is not my fault, because it was already broken when you gave it to me; and furthermore I've done everything I could to fix it. The administration's line on unemployment goes something like this: (1) unemployment is not as serious a problem as it might seem because many of the unemployed are women and young people; (2) anyway, unemployment is not our fault, because it was a necessary consequence of winding down the war; and (3) we are doing everything either we or the Democrats can think of to fix it up.

Administration spokesmen, of course, do not actually say that unemployment is not serious—on the contrary. "We recognize that unemployment is a serious problem," Council of Economic Advisers Chairman Herbert Stein told the Press Club last month. "At the same time," he continued, "it would be a travesty to call it a disaster or to compare the situation with the Great Depression. This is especially true when it is recognized that in 1971, 48 per cent of all unemployment was accounted for by people aged 16 to 24 and another 23 per cent by females 25 years of age and older." Without saying why, Dr. Stein left the clear implication that unemployment of women and young people is less serious than the unemployment of mature men. He also pointed out that a lot of young people are not in the labor force—as though that eased the plight of those that were—and that some of those counted as looking for work were also in school.

Dr. Stein is right, of course, that a higher proportion of the unemployed are women and young people than, say, a decade or two ago. This is partly because there are proportionately more women and young people in the labor force than there used to be, but it is mostly because unemployment rates for these groups have gone up relative to those of experienced men. Both phenomena—the increase in women and young people in the labor force and the relative rise in their unemployment rates—have been taking place gradually over the years. They are not features of the current recession.

The administration's apparent contention is that unemployment of women and young people does not cause as much pain and suffering as unemployment of mature males because other people do not depend on their incomes. But this is only partly true. Many women, especially black women, head families, and so do many men under 25. The 23-year-old married man with a new baby and no assets to fall back on may feel his unemployment more keenly than his father. There is also psychological damage. The young person who can't find work may end up pretty discouraged with himself and society. Even loss of a part-time job may be serious, if it means dropping out of school.

Wives tend to earn less than their husbands, but that does not mean that no one depends on their incomes. The black family which is finally making it because both husband and wife work may feel just as desperate about the payments on the house or the car when the wife is out of work as when the husband is.

In any case, the unemployment rate is not so much a measure of economic pain and suffering—the poverty rate is a more sensitive indicator of that—as a measure of the health of the economy. It is also probably a pretty accurate proxy for the way people *feel* about the economy, which is why it matters in elections. If jobs are hard to get, people know about it. They worry about their own jobs; they postpone the vacation or the addition on the house or the store. It may not matter much to their state of mind whether the particular person they heard was out of work was Sam's father, or Harry's wife or Aunt Sue's oldest boy.

The second argument—that unemployment is attributable to de-escalation of the war—is a recurrent theme in the President's speeches. "We all know why we have an unemployment problem," he told the Nation on August 15. "Two million workers have been released from the armed forces and defense plants because of our success in winding down the war in Vietnam. Putting those people back to work is one of the challenges of peace . . ." "It is obvious," he repeated in his last economic message, "that the unemployment problem has been intensified by the reduction of over two million defense-related jobs . . ." And in the State of the Union address, he pointed out again "that if the more than two million men released from the armed forces and defense-related industries were still in their wartime jobs then unemployment would be far lower."

These presidential assertions that peace causes unemployment—vaguely reminiscent of Marxist theories that a capitalist system needs imperialism to maintain prosperity—are not stressed in the Report of the President's Council of Economic Advisers for the simple reason that they are not very accurate economics.

The attribution of the unemployment to military cutbacks implies that defense expenditures create employment and that other government expenditures do not. But there is no basis for this. If the administration had fully offset drops in military spending with increases in civilian programs, the de-escalation need not have created any aggregate unemployment at all, although there would have been local difficulties arising from the fact that the defense and civilian employment might have been concentrated in different places.

In fact, however, prior to August 1971, the administration deliberately pursued a policy of *not* offsetting the military cutbacks fully with increases in civilian spending. They were consciously holding down total government spending in order to create slack in the economy and reduce the inflation. It was not an implausible policy, although the human costs were bound to be high. Many economists thought at the time that it would be worth creating some unemployment in order to lower the rate at which prices were rising.

However, the policy did not work. Unemployment rose all right, but the inflation stubbornly refused to subside. Finally, in August 1971, the administration abruptly changed its strategy, began fighting inflation directly with wage and price controls, and started to use the budget to stimulate rather than cool off the economy. In view of this history it would be far more accurate to attribute current unemployment to a well-intentioned but unsuccessful attempt to fight inflation without price controls, than to attribute it to de-escalation of the war.

The third argument—we are doing everything anyone could do about unemployment—was strongly stated by Dr. Stein in his remarkable speech to the Press Club, "This administration has, I believe, the most powerful, comprehensive, coherent program for dealing with unemployment that any administration ever had . . . We are running the biggest budget deficit ever, except for World War II . . . We have the most comprehensive price-wage control system ever except during the Korean War and World War II . . . We have suspended the convertibility of the dollar . . . We are spending this year about $10 billion for manpower programs and unemployment compensation . . ." The message is: you Democrats have a lot of gaul criticizing us; after all, we're playing your song and playing it louder than you ever played it yourselves.

This recital of Republican accomplishments boggles the mind—at least for a moment. If you had offered 100 to 1 odds a year ago that Stein would be standing before the Press Club crowing about deficit spending, devaluation, and comprehensive price controls you would have had no takers. If you had predicted that the Republicans would

actually be exaggerating the size of their deficit you would have evoked the sympathetic halfsmile that people reserve for harmless nuts.

But look carefully at that whopping $39 billion deficit now predicted for the fiscal year ending June 30, 1972. In the first place, most of that deficit is a result of the sluggish economy, not a response to it. Tax collections are below what they would have been at full employment and some kinds of expenditures (such as unemployment compensation) are higher. The full employment deficit, a much better measure of the stimulative effect of the federal budget on the economy, is much smaller ($8 billion, not $39 billion) and very recent. In the first half of this fiscal year the government actually ran a small full employment surplus. Moreover, the full employment deficit in the second half of the fiscal year (January-June 1972) is at least partly accomplished by pushing expenditures that would normally have occurred later into the current six month period. For example, the administration has indulged in a bit of calendar reform—the most original budget idea since Julius Caesar?—and has at least temporarily abandoned the twelve month year. Thirteen months worth of public assistance payments will be made to the states in the current fiscal year, leaving only eleven payments for next year. This maneuver has the effect of making this year's deficit look bigger (and next year's look smaller), but it has no real economic effect. States are not going to get their money out to poor people any faster than they would have anyway. Some of the other devices used to enlarge the current deficit seem equally unlikely to have any real economic effect. As George Perry put it in testimony before the Joint Economic Committee recently, the current "deficit looks to be about 10 parts slack-induced . . . 1 part full-employment deficit, representing a noticeable but not excessive fiscal push on the economy and 1 part hope, representing estimates of expenditures that may never materialize."

That the administration is finally using the budget to stimulate the economy is good news whether they are pushing hard enough remains to be seen. One could certainly make a case for creating deficits in a more stimulating way—giving consumers a tax break rather than investors and spending more on programs that create jobs directly, such as public service employment.

In the end, of course, it may turn out that the unemployment issue is really very simple after all. The average voter is probably neither interested in nor influenced by the who-struck-John arguments of the economists. If he has the gut feeling—based on personal observation, unemployment rates, or whatever evidence comes to his notice—that the economy is moving forward he will vote for Mr. Nixon and if he doesn't, he won't.

THE RETAIL PRICE OF BEEF

Mr. CURTIS. Mr. President, yesterday a meeting was held by the Secretary of the Treasury, Hon. John Connally, with leaders of the various chain food stores to discuss the price of food and, especially, retail prices of beef. The purpose of the discussion, as I understand it, was to try to pinpoint the causes of the price increases that are causing concern both to leaders in Government and to consumers at large in these times in which we are all dedicated to waging as effective a fight against inflation as possible.

I earnestly hope, Mr. President, that Secretary Connally and the heads of the large food chains looked at the problem with historical perspective. I hope they allowed economic facts rather than emotionalism to guide them. I have some facts to pass along to them. I will get right to the point.

Food prices today are not out of line with the prices of other commodities, such as manufactured goods. They have not risen nearly as fast as prices of manufactured goods. They fluctuate a great deal more than other prices. They are only very indirectly related to the prices received by producers of the raw agricultural products—in the case of beef, the livestock that are sold in the marketplace.

It is noteworthy that the Giant Food Stores here in Washington have launched a consumer-oriented campaign through their advertising columns to discourage the buying of beef. As part of the campaign, they have a consumer specialist or "promoter," as I prefer to call the person, who happens to be a former high Labor Department official in the Johnson administration, who is publicly suggesting that consumers buy meat substitutes.

I think this whole campaign by Giant Food Stores is an advertising gimmick and, worse yet, a hoax and a sham. The Giant Food people are trying to win customers away from other food stores by making the public at large think they really are giving them good advice, when in fact it is inaccurate advice. If the Giant Food people wanted to do their customers a favor, they would advise them to shop at other markets for the beef they buy.

Several weeks ago a cattle feeder from Hastings, Nebr., went to his local newspaper office and looked up cattle prices compared with retail meat prices on the local market 20 years ago compared with today.

He found that cattle prices were down slightly from the levels of 20 years ago, despite rather marked increases in retail prices of some beef products.

I have carried his research project a step farther, making a similar comparison for Giant Food Stores as well as several other retail commercial outlets in the Washington, D.C., area. The dates I used for comparison are approximately the same as those used by the astute Nebraska cattle feeder, whose name happens to be Ray Kissinger, who pointed the way for this type of historical research effort. They slightly predate the current controversy but are comparable.

I find it most interesting, Mr. President, that in the Washington Post for Thursday, January 13, 1972, the Giant Stores advertised only one beef product that was on a list it advertised approximately the same time 20 years ago, on Thursday, January 11, 1952, and this one product was hamburger.

What were the comparable prices, 20 years apart, for this product?

On January 11, 1952, Giant Food Stores advertised "lean" hamburger for 65 cents a pound. On January 13, 1972, "regular" hamburger containing 25 percent fat was advertised for 69 cents while "lean" hamburger containing 20 percent fat was offered for 89 cents a pound.

Is that such a big jump in retail prices for a 20-year period when the cost of everything else has been spiraling?

I decided to do some grocery-ad shopping to try to find a better buy, and I found that a competitor of Giant, the Safeway Stores, offered ground beef in the same Washington Post of Thursday, January 13, 1972, at a lower price than Giant was selling hamburger not only in 1972 but 20 years ago as well. The Safeway price for hamburger in January this year was 59 cents a pound. Would it not be fitting and proper for the Giant consumer expert, Mrs. Esther Peterson, to recommend in Giant's advertisement that Giant's potential customers in the Washington area buy their hamburger at Safeway? Needless to say, she did not do this.

I decided to make some further comparisons. On January 11, 1952, Giant Stores advertised sirloin steak for 98 cents a pound. Twenty years later, on January 13, 1972, Acme Stores in the Washington area offered sirloin steaks—"full cut including the tenderloin"—for $1.29.

Twenty years ago the Giant Stores advertised round steak for $1.10 a pound. At Safeway Stores in the Washington area, consumers could buy round steak for $1.19 on the same day this year when they could buy hamburger at Safeway cheaper than they could buy hamburger at Giant either then or 20 years earlier.

Giant Stores advertised chuck roast for 69 cents a pound on January 11, 1952. Twenty years later on the comparable date, Giant did not advertise the same product but Consumers Supermarkets offered it to customers in the Washington area for 89 cents a pound boneless.

I do not doubt that there have been increases in some food prices but there have been decreases in others from 20 years ago, Mr. President. I think the consumers can find the bargains by reading the pricelists in all the grocery ads in the Washington papers. They do not need the kind of misleading advice Mrs. Peterson has given them.

There is one thing I want to point out that I am sure Mrs. Peterson will not tell Giant's customers. This point is that livestock prices—the amounts which farmers and ranchers receive for the raw products—actually are lower today than they were 20 years ago.

On January 11, 1952, the Washington Post reported that prime beef on the Chicago livestock market, then the leading market in the world, sold as high as $37 a hundredweight while choice steers sold from $32.75 to about $36. Twenty years later the leading livestock market had shifted to Omaha, in my own State of Nebraska, where the Washington Post reported that on January 13, 1972, prime steers sold at a peak of $36 while choice steers went for $34.50 to $35.50.

I think the Giant Stores and any others that have maligned the meat industry, including the beef industry, should make a public apology. They should take a truth-in-advertising oath.

In Nebraska, a group of cattle feeders has purchased advertising space in next

Sunday's Omaha World-Herald to tell their side of the story. An article in the March 28th World-Herald described the effort, and I respectfully request permission at this time to put it in the RECORD, Mr. President, along with a letter to the editor from Mr. M. S. Schindler of Elgin, Nebr., which appeared in the same issue, setting forth some further interesting facts about earnings and profits on beef.

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

FEEDERS COUNTER "UNFAIR" MEAT ADS

(By Don Ringler)

Some livestock feeders in Stanton County are fed up with recent advertising campaigns of certain chain stores urging consumers to boycott red meat because of high prices.

After doing a slow burn over these "buy something else campaigns" members of the Stanton County Livestock Feeders Association prepared a "report to the consumer direct from the cattle industry."

It will appear in a paid advertisement in Sunday's World-Herald and places the blame for meat price hikes on the retailer rather than the farmer.

USDA FIGURES

The advertisement signed by Steve Stevenson of Stanton, association president, says: "We think that it is very unfair for certain chain stores in the large consuming centers to attempt to have consumers boycott meat counters by ads, posters and other methods. Their motive is to make even more money by selling less desirable substitutes."

Quoting U.S. Department of Agriculture figures, the ad shows how the consumer's beef dollar is divided by the beef industry.

It gives the following breakdown on the $547.80 the consumer pays for the 481.3 pounds of retail cuts from a 1,100-pound live steer at the average price of $1.11½ cents a pound:

Retailer, $142.48; packer, $41.27; feeder, $103.51, and rancher, $260.54.

LONG, HARD LOOKS

"The retail price spread of $142.48 is definitely not justified by services rendered, the ad says. Consumers should take a long, hard look at this figure and not unfairly blame the cattle industry for the bulge in beef prices. Sirloin steak sold in Omaha 20 years ago for 79 to 89 cents a pound and ground beef 57 to 65 cents when cattle prices were higher than they are now. The cattleman's portion of the consumer's beef dollar is much smaller now than at that time," the ad continues.

Accompanying Stevenson to Omaha to place the ad were M. J. Hankins of Stanton, past president of the Nebraska Livestock Feeders Association, and Leonard Martin of Stanton, past president of the Stanton unit.

"We're not asking special favors," said Hankins. "We just want to get the truth across."

HE LIKED COMMENT

Hankins termed President Nixon's statement Friday blaming processors and grocers for rising food costs rather than the farmer as the "best statement that has come out of Washington in the last quarter century."

Martin pointed out that the rancher's share of the beef dollar is not excessive considering he must keep a calf for 18 months to grow a 700-pound feeder steer.

"The feeder has the animal for another five months," he added. "However, both the packer and retailer have that same animal only a few days."

[From the Omaha World Herald, March 28, 1972]

ELGIN, NEBR.

Regarding a recent Pulse letter, "Trail of the Steer," by the time a farmer gets his $328 for the 1,000 pound steer he has an investment of over $200 in feed and veterinarian expense over two years, or an annual percentage of 32 percent of his $200 and his labor. The $361 the packer receives amounts to 7 percent on his $238 investment and labor, but he has the beef in his possession only about ten days. This on an annual rate is a whopping 250 percent.

The $468 the retailer receives amounts to 29 percent on his $361. His investment and labor is also over about ten days. This on an annual rate as compared to the farmer is a horrendous 1,040 percent. How's that for a choice cut?

M. S. SCHINDLER.

GOVERNMENT WAGE BOARD INCREASES IN RHODE ISLAND

Mr. PELL. Mr. President, I am both heartened and encouraged by the announcement of the 5½-percent increase in wages for the Federal tradesmen, craftsmen, and industrial workers in the Narragansett Bay Area effective April 2, 1972.

As one who has been working for improvements in the system that is used to set Government blue collar wages, I am very familiar with the need for the hard-working employees in the Narragansett Bay Area to receive increases commensurate with the wages they have lost through inflation, and I am delighted that they are receiving an increase.

I am, also, happy to note that the survey of comparable private wages that was taken in January was the result of a congressional act last fall overriding the freeze President Nixon had imposed on wage surveys.

However, I believe Federal workers deserve equity. In this regard, I am disappointed that an Executive order of the President has prevented the Federal blue collar workers of Rhode Island from receiving the level of increase which the survey of comparable private wages had entitled them.

I recognize the importance of seeking to keep within the Federal guidelines. However, since Federal wage increases are usually at least a year behind private industry increases, there are very real grounds for allowing the 6.8-percent increase required by the Narragansett Bay Wage Survey. This figure should be kept in perspective with the 8.3-percent increase private industrial workers in Rhode Island received last year.

Since the wages of Government blue collar workers are set by surveys of past increases in comparable jobs in the private sector and since Government blue collar increases always trail increases in the private sector, I think it is unfair that the Government blue collar worker be made the leading edge of the administration's late anti-inflation effort.

I would urge the administration to rescind its wage ceiling and to allow Government workers the same increases permitted in the private sector.

REPRESSION OF JEWS IN SOVIET UNION

Mr. TAFT. Mr. President, much has been written concerning improvement of United States-Soviet relations and I certainly support such a policy, and hope it will continue. However, I believe it can only be based on a frank discussion of differences. One very important issue to be agreed upon, before a significant improvement can be made in our relations with the Soviet Union, is the issue of religious freedom.

Reliable reports indicate that the Jewish minority in the Soviet Union continues to be subjected daily to religious and cultural repression. The Soviet authorities habitually harass the Jewish minority. Complex and restrictive requirements are imposed on the right of Russian Jews to emigrate. Mail from outside the Soviet Union to Russian Jews is delayed for long periods of time and quite often discontinued completely. Jewish synagogues have been closed and currently only 60 still remain open with approximately half of these located in non-European sections of the Soviet Union where less than 10 percent of the total Jewish populace resides.

Soviet Jews have no Jewish libraries or social centers to enjoy. No Jewish newspaper, either in Yiddish or Russian, exists.

To summarize briefly, the 3 million Jewish men and women in the Soviet Union are being subjected to a systematic policy of "spiritual extermination."

I would urge that our Department of State change its reluctance to discuss this question and make every effort to impress this issue upon the Soviet Government, especially as to the right of Soviet Jews to emigrate to countries of their choice as affirmed by the United Nations Declaration of Human Rights. In addition, I believe it is quite urgent that President Nixon discuss this crucial issue with high Soviet officials in Moscow this May, since an omission to stress the plight of Soviet Jews would be an indirect indication that the U.S. Government does not consider this matter as being highly critical.

A letter from a prisoner serving in a Russian labor camp, similar to the situation in which many Russian Jews currently find themselves, has recently come to my attention. I ask unanimous consent that it be printed in the RECORD.

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

LETTER FROM MORDOVIA—TRANSLATED FROM THE RUSSIAN

I arrived at Mordovia a couple of years ago and here I am in one of the dozens of Mordovia Labor Camps. I remember well the road from Potma to the place of incarceration. In every direction there were deep woods but on both sides of the road, all around appeared fences of the camps. It appears that life in these regions occurs only in the immediate neighborhood of the camp. It is possible to see groups of people in prisoner's garb accompanied by guards with automatic weapons and dogs. Next to them club buildings, their existence incomprehensible for us, with slogans atop the buildings, but basically what stands out are fences, fences, and more fences. There are many camps in Mordovia. The prisoners refer to them simply as zones. What are they? Usually, it is an area surrounded by a fence—2 or 3 meters in height—a completely blind fence without a single opening. Above it is stretched barbed wire and observation towers are above from which constant surveillance takes place.

We are isolated from the outside world, awesome, by means of a forbidden zone into which the prisoners are not allowed to en-

ter. It is a plowed area of earth fenced by another row of barbed wire. One finds there an armed detachment which comprises the heavily armed guard. Soldiers observe their shifts in the elevated towers from which automatic orders can be broadcast when any prisoner approaches the forbidden zone.

The zone consists of living quarters and working quarters. We live in barracks which are one to two stories in height. Inside they are divided into areas of 4–12 persons. Different camps have different arrangements. We sleep on bunks arranged in two levels and at nighttime the light is not turned off, so that we can be watched 24 hours, even while sleeping. This was difficult to get used to.

All prisoners wear the same clothes, summertime, cotton pants and shirts, and for winter we have a thin padded jacket and a hat—all of dark colors, and frequently they have been previously worn by other prisoners. Most of our possessions are taken away from us upon arrival, and are not returned until our term of sentence is completed. We are not permitted to wear woolen clothes in spite of temperature as low as 40 degrees below zero, centigrade, a frequently occurring temperature.

Here, one finds prisoners who are being punished for different offenses. One finds murderers, former Nazi criminals and so-called political prisoners. Generally speaking, it is considered that there are no political criminals in the Soviet Union. Therefore, there are no specific laws governing their detentions. Because of that persons convicted because of their ideas are qualified under Soviet jurisprudence as criminals. For example, in the year 1971, large groups of Jews were sent to Mordovia convicted in several different towns of the Soviet Union for anti-Soviet activity. I have met many of these persons and understand that their sole crime was the desire to emigrate to Israel. And, here, all of us are forced to live behind barbed wire.

The entire life in the camp is designated to hard labor. In shops where the majority of prisoners work, there are two shifts. People work one week in the first shift, in the second week, the second shift. For the first shift, we must get up at 6:00 A.M., then breakfast and at 7:30 A.M. is the summons for work. The first shift lasts from 8–4:30 P.M., with a 30 minute lunch period from noon–12:30. At 5:00 P.M. we leave work, then supper and free time until 10:00 P.M. For the second shift, which has in my opinion, more strenuous work. However, the necessity for rearranging oneself each week is the most unpleasant part. Here is a schedule for the second shift: 8:00 A.M. one gets up, breakfast, and at noon—dinner. At 4:00 P.M. we arrive for work from 4:30 P.M.–12:30 A.M. We work until 30 minutes after midnight, supper from 7:00–7:30 P.M. We leave work at 1:15 A.M. We are permitted to sleep at 1:30 A.M. We only have six hours to sleep—from 1:30 A.M.–8:00 A.M. It is taken for granted that almost everyone working the second shift sleeps from dinner until awakening (thus, the supposed four hours of free time cannot be used.) Thus, at 7:30 A.M. we go to work!

In general it is considered that work is the basis for re-education of criminals and therefore it is assigned the most important and special role in the life of the camp: both the encouragement and punishment of the prisoner is determined by his attitude toward work. Moreover, work is the only source of existence because from the money earned, with permission of the overseers, the prisoner may utilize up to five rubles per month for purchase of products from the commissary.

The prisoners are utilized in the Mordovian Complex for many types of common labor, completely unrelated to their educational and professional backgrounds. The "political" prisoners are used as a rule for the most strenuous and dangerous (healthwise) areas. I have seen that very clearly in the example of convicted Jews, many of whom have received higher education, and prior to arrest held government positions.

Zenkovka factory work, to which many are assigned, is the most difficult. One finds there a science associate, Vladimer Mogilever, a military engineer, Wulf Zalmanson, his brother Israel—student of the Polytechnical Institute of Riga, Asher Frolov—student of the Polytechnical Institute of Ryazan, and Shimon Levitt.

What is Zenkovka? One places into a drill press a zenker (reaming tool). It looks like a drill but it has a blunt end. It is not used for drilling, but for widening an opening. One takes an axle, places it into a vise and then turns a valve. Compressed air moves the vice so that the axle is positioned exactly under the reamer. Then it is necessary to move the wheel of the press so that the reamer is lowered into the opening, and widens it. After the opening is traversed, the wheel is rotated in an opposite direction, and the reamer is raised. Then the vice is opened by turning a valve. Without stopping the rotation of the reamer, it is necessary to remove the work piece and install a new one. Then the entire process is repeated. During a shift 1200 of these pieces must be processed. The most dangerous part is to remove the finished piece and install a new one. Switching off the press in this technology was not anticipated, which is a serious infraction of technical safety, completely inadmissible in freedom. The rotating reamer may easily injure the prisoner's hand. Such injuries are fairly common. In addition to the fact that the reamer may injure the hand; sharp, hot chips fly from under the reamer. To work in gloves is forbidden (it is even forbidden by the rules of technical safety) because if a hand in a glove would be caught under the reamer, then the glove would begin to wind on the reamer with meritable consequences—(one getting pulled into the reamer).

In addition to the above description, one should add the splashes of emulsion which attack the skin, fumes and horrible noise. The noise is not only from one's particular press, but there is a horrible noise emanating from the workshop itself. Shimon Levitt has small cuts all over his hands—a sight hideous to the eyes, but recently he seriously wounded his hand. But, this will heal. Wulf Zalmanson, without explanation was transferred here from the technical division where he was involved in engineering work—the only one of the Jewish prisoners; Israel Zalmanson was transferred from the Division of the Chief Mechanic, ostensibly for his poor work, although he completed all of his assignments. No one is able to fulfill the work norms, although Levitt is almost able to reach the quotas. The quota load is tremendous and if one does not fulfill it, one is punished.

The work is even worse. In so-called "emergency brigades" where David Chernoglas, a former engineer, is working. All of us fear assignment to this particular area. The reason being that basically it consists of loading and unloading railroad cars. The work is very difficult and dangerous. Moreover, one may be awakened at any time during the day or night, one does not know ahead of time. Even on a Sunday, one works.

At first glance, sewing of mittens in the camp shop appears to be fairly light work. Canvas mittens sewn in Mordovia are worn by workers far from Mordovia. Such shops exist in almost all of the zones. Women confined for political reasons—14 of them, among which is the sister of Israel and Wulf Zalmanson-Sylva. These women are occupied almost exclusively with this work, but even for them, the work is tiring. What can one say about the men: Aryeh Knock, Yosef Mendelevitch, Yuri Fedorov, Alexis Murjenko . . . excessive demands must be fulfilled in dimly lit buildings using machines which continuously break down. Besides which the completion of the quota is required under all circumstances, if one is to escape punishment. Sylva Zalmanson during work suffers from constant backache and dizzy spells related to constant eye strain. Because of acute eye strain, Yuri Fedorov was transferred from sewing mittens to turning them inside out—work which is less conducive to strain and acute conjunctivitis in the eyes. In general, he is fortunate because the quota for sewing can be met by few, even healthy persons are unable to meet the quota and all suffer consequences.

I myself work in construction. As do Tolya Altman, Michael Shepsholovitch, Boris Penson, Ahron Shpilberg. To begin, they were merely assisting pushing wheelbarrows with sand and moving different heavy objects. It was especially difficult for Candidate of Physical Mathematical Sciences: Lev Korenblitt, a man of weak health, who has spent all of his life in scientific laboratories and who simply did not have the strength for this type of hard work. Moreover, during transportation to the camp, Lev was so weakened that during the first week, he was unable to get up, not mentioning the fact that he was still driven to work in such condition and expected to meet his quotas.

The situation is also aggravated by the fact that it is almost impossible to endure the Mordovsky frost in the "so-called" special camp clothing. In our lives, various changes occur frequently, at any time one may expect a transfer to even more difficult and strenuous work. This took place with Tolya Altman and Misha Shepsholovitch who work together on a concrete mixer in penetrating winds. And then, one may be sent to work on the press, as happened to the husband of Sylva—Edward Kuznetsov. This work is known as being quite hazardous to prisoners because of virtual absence of fundamental norms of technological safety. In the camp, the press does not have any safety—grill and work pieces have to be replaced without stopping the machine. In freedom, one wouldn't encounter this situation anywhere, but in the camp it is permitted. The workers here are state criminals. The variety of labor in the camps is united by one single general quality, namely, unreasonably high work quotas, requiring not only experience but also unusual physical strength and this is possible only with adequate diet. It is difficult for a newcomer to adjust to camp food.

For breakfast: "soup." For those fulfilling the work quota, additional nutrition is available—cereal with vegetable fats and sugar. Since I do not receive this cereal I do not go to the eating hall in the morning at all. For dinner one is given cabbage soup and gruel (either peas or ragu—hardly edible). For supper a small piece of fried fish and again gruel. Presently because of the incidents of an epidemic of influenza, they started to occasionally give one onion to each prisoner. Some onions are also sold in the labor camp commissary, but there were not enough to go around. In general, no fruit or fresh vegetables are even given or sold. It is interesting to note that in our letters mentioning that we are fed "not badly"—this phrase is usually stricken out and the letters are returned by the censor. In addition to the established camp ration, under the conditions of meeting the work quota and "good behavior", prisoners have the right to buy products in the commissary to the extent of a miserly sum of up to five rubles per month. The assortment of products offered in the commissary is quite meager: margarine, cheese that looks like salami, canned fish of poor quality, candy—hard candy and cara-

mels, gray bread (poor quality white bread), tobacco, fruit jam and also such necessary items as toothpowder, envelopes and stamps. The above assortment has been established officially and has not changed in the course of several decades.

Food in the hospital is substantially better in the camp according to so-called form 6B. Basic difference: white or rather gray bread, compote or pudding (thickened with potato starch, not gelatin), milk (250 grams per week), one piece of meat (50 grams per day) for dinner as the main course, truth (?) to fill in the fourth category. To enter the hospital for treatment and food is the ambition for every prisoner. This is, of course, difficult.

The camp hospital has approximately 120 beds, while the total number of prisoners in the strict and special regime camps serves a population of 1500. The hospital has almost no specialist if one does not count the three therapists, one surgeon and one dental technician, and all of them have just finished medical training and lack experience. The doctors work from 10 A.M.–5:00 P.M. In evening and night hours, during holidays and relief days, service is not rendered at all since there is no doctor on duty. Instead of a doctor and in place of a nurse and sanitary worker, there is a person—so-called paramedic, who has no medical training. For example, in the hospital of the Seventh barrack, the paramedic is a former tractor driver. It is interesting that even in the hospital, inspite of the fact that work is not forced, differences in regime are preserved: for those in the strict regime are in wards, and the specials are usually kept in solitary rooms. In cases of surgical intervention, the sick person is brought on a stretcher directly from the zone by prisoners and afterwards, following the operation, the patient is carried back to the zone.

The supply of drugs in the medical division is very meager and most of the medicines are kept for a long time beyond the limit of their utility. It is forbidden to receive drugs from relatives. Altman's wife was refused permission to pass on Vakalin to her husband which he needed for stopping cruel pains in his stomach. Federov's wife was forced to leave Sinalar which she brought for her husband Yuri in the guard room. Eventually, the drug was transmitted to the hospital and Yuri has made occasional use of it for curing eczema, which has developed in the camp.

Vladik Mogilever, who is not able to cope with heavy physical labor (I have already spoken of work in the reaming shop) because of acute nearsightedness, has been transferred to work that has no quotas—into a brigade for producing wooden logs. So he is sawing wood quietly in fresh air. It was possible for him to gain admission into the hospital and obtain from them an appropriate note—which explains the beautiful changes that have taken place for him. For many others, to be admitted to the hospital is like reaching the cup of the holy grail. Edik Kuznetsov has been suffering with hellish pains in his stomach, suggesting stomach ulcers. He was completely downed by sharp pain following heavy labor and with endless nausea. However, no one believed him and he was driven to work, he was stuffed with some kind of tablet used for dysentery without establishing the diagnosis! There was no mention even of special nutrition, although Edik doesn't even consume one tenth the camp ration.

To attain a diagnosis is a very complex business, which frequently requires several months. Appeals to the camp administration usually bring no results, and despairing prisoners undertake hunger strikes as a protest, which lasts many days and further undermines their health. One pays a high price for any medical service in camp! Only after a week long hunger strike, Edik Kuznetsov was finally placed into the hospital. As a result of a primitive investigation, the doctor diagnosed gastritis, in spite of obvious symptoms of stomach ulcer. Surprised, Edik requested an x-ray examination, but was "promised" it in a month. No measures were taken except that he was given some tablet to counteract nausea, and now Kuznetsov finds himself back in the zone in the same condition he was before.

His wife, Sylva Zalmanson, is developing a stomach ailment with similar symptoms—sharp pain and nausea. Moreover, her hearing has deteriorated. Sylva needs very badly a thorough medical examination which under the conditions existing in Mordovia is practically impossible to obtain.

Anatoly Altman came into the zone with an ulcer of the duodenum which was diagnosed while he was still free. He began to experience pains almost from the start and was one of the first Jews to gain admission to the hospital. He left the hospital, however, with a diagnosis of gastritis which does not anticipate special nutrition.

Shimon Levitt is suffering with inflammation of frontal sinuses. In the course of a long period of time, in view of absence of a specialist, the only medication he received was headache pills. After a sharp deterioration of his condition, he was relieved of work. He had a high temperature, but due to the fact that the prisoners are convoyed only to the hospital on Fridays, even though he was in the same zone as the hospital, all treatment was postponed by almost a week. From the hospital, he was released with the temperature, which even now occurs every evening.

Solomon Dreizner experienced for two months severe tooth discomfort and was unable to get an appointment with the doctor. After he was notified that his mother died, he developed an inflammation of the tertiary nerve, this causing him unbearable pain. The head of the medical division, a woman, declined to render him emergency medical treatment, threatening him with punitive isolation. He was forced to go to work in his sick condition. Since he was unable to work he was deprived of a scheduled visit. Solomon wrote several complaints to different departments complaining about lack of medical treatment and his unreasonable punishment. Being led to extreme mental anguish, he has declared a hunger strike for six days. Prison officials have told him to visit a special department in prison and told him he is a troublemaker and is having a bad effect on other prisoners. They have threatened punitive measures.

Jacob Michaelovitch Suslensky suffered from heart trouble on Sunday December 5, 1971. I, myself, was not a witness to his severe pain. Naturally, in the morning he went to the medical division of the prison. He was required to work on the second shift. He requested medication and relief from work at least for one day. Monday the chief of the medical department, a paramedic Egenova, told him "You should spend less time studying the Jewish language". However, she did not release him of his work. When I saw him I was surprised and even more surprised while hearing his account. Mogilever went after work with the sole purpose of checking out what had happened. The reality has exceeded all expectations. The chief paramedic very quietly repeated all she had told Yacov while Vladik showed a certain amount of confusion. He has reminded the paramedic Egenova about Statute 123, Constitution of the Soviet Socialist Republic, which declares the racial and national equality under law and also statute 74 of the Ukranian Union of the Federal Republic of the U.S.S.R., which punishes those who violate equality under the law. On the question "And where did you learn that—Suslensky is studying the Hebrew language?" The chief innocently replied "Don't you think that the Section G Internal Order has informed us of this?" What is truth is truth. The Section of Internal Order not only informed us, it makes the final decision whether a man for example, would be directed to medical treatment. Let us say that Yasha already twice has been stricken from the list. He has complained about the poor medical attention to the prosecuting attorney overseeing the Soviet Socialist Republic.

One can easily imagine how such medical service is reflected upon the health of the people, if in order to be medically treated, it is necessary to secure from the devil a statement about good behavior—without any verbal dependence of all rules and regulations of the labor camp. A slight deviation is followed by punishment. The variety of the different punishments in the labor camp is without end. For example, the removal of the right to receive mail and an increase in the duration of confinement (sentence). Prevention of receiving of the packages are some examples of punishments. By the way, this is the single source of additional food for the inmate, because to receive packages, those in the labor camp are not permitted, only after they have served half of their sentence, irrespective of their length of confinement. Only one package up to five kilograms in one year and even then provided that your rights have not been rescinded. In a package up to one kilogram in weight, which an---- received twice a year from the beginning of confinement, one may receive only dry goods and according to the instructions of the camp, these products must involve cracknel (a ring-shaped piece of dried mutton) and biscuits. Every other kind of food is forbidden. Imprisoned Jews that have been sent packages of bouillon cubes. However, even this was eventually forbidden. The excuse having been made that while they are dry goods, they are of meat extract, however, and meat is forbidden. Chocolate is also forbidden because "it is a substance that leads to 'excitement'". However, even the lack of this very insignificant addition to the products, makes it more difficult to endure the life in the camp.

Even more severe punishment is the removal of visitation rights. For those who are in the camp, the receipt of letters and visits is important as a symbol of human ties. It is understoood that the day of the meeting is yearned for with a great deal of excitement which is anxiously anticipated with preparation for several days as if it were possible to live again with one's visiting family, even though the actual duration of the visit is four hours under the watchful eyes of the supervisors. During the personal visit, one is not required to work according to the desire of the person in charge of the labor camp. However, I have not witnessed even once that a Jewish inmate would have been given visitation without requiring an entire working day. In 1971, this was done in the cases of Ahron Shpilberg, David Chernoglos, Victor Bogislovski, Lasal Kaminsky, Yuri Fedorov, Anatoly Altman, and in general all of the imprisoned Jews. The reduction even with the very brief time for visitation cannot be understood. It is a senseless cruelty if one would consider that the relative may have to travel 1000 miles in order to meet this forthcoming difficult blow and others for which they are really not prepared. The supervisors of the visits treat the relatives very harshly and with a deep hatred and this all is allowed to continue without reprisals for these prison officials. In spite of this, none of the relatives enter a complaint, fearing that the duration of visitation will be shortened. Any complaints to the overseer of the labor camp leads to no result. The women's supervisor Mache and Nadi feel they are in complete authority, even more so. Contrary to law is the personal search which relatives are subjected to prior to visitation, which of course are not sanctioned by any prison regulations.

However, it is impossible to say anything, otherwise visitation may be completely forbidden. This is what happened to the wives of Chernoglos, Kaminsky, and the relative Kuznetsov. It involved actual body contact and turning the pockets inside out, emptying of the pocketbooks. These searches are carried out for the purpose of finding forbidden objects: guns, alcoholic beverages, narcotics, poisons, cigarettes, items of consumption, letters and postcards from Israel, criminal objects from the standpoint of the supervisor. These items are removed from the search. That is about all that one could find on the relatives of confined Jews. However, the degrading process of search is repeated time and again. Frequently the visitation is forbidden, the reason given—the work quota had not been fulfilled. Israel Zalmanson has been forbidden his forthcoming visitation. At first officials gave a warning. However, he had fulfilled his normal 80% and they punished him. The same thing happened to Aleca Murjinko. He had not fulfilled his quota for two days and has been denied visitors for all 1972. Aleca declared a 27 day hunger strike. Fedorov and Kuznetsov acted in solidarity with him in a 14 day hunger strike. Aleca is now near death and has ceased his hunger strike only when the prosecuting attorney promised to change the punishment to something else. Edward Kuznetsov is denied all visitors because he does not have any close relatives. His mother is bedridden and his wife Sylva Zalmanson is not permitted to visit her husband in the camp compound. Why wouldn't they change a personal visitation when he has no relatives, so that he could be visited by friends at least twice per year. However, this has been forbidden. It seems that Edward could have had personal visitation with Sylva who is located a few kilometers from him. However, this has been completely forbidden. At this time the prison officials require the examination of the original marriage certificate, while in spite of the fact, in all official documents Sylva and Edward are entered as husband and wife. This difficulty has existed for at least one year, husband and wife denied visitation.

All of the correspondence of the Jewish prisoners is subject to very strict censorship, with the exception of the doctor. The rest of the prison officials are censors. The inmates are forbidden to describe the life in the camp—the daily schedule and the quality of food. The correspondence should be strictly personal, otherwise the letters simply are not transmitted to the people they are addressed to or they receive them with many parts of the letter stricken out. This is especially sad because political inmates are not able to receive correspondence from their close relatives whose content could not be contested. This is done for the purpose of suppressing the spirit of the inmates and is done to make them feel that since no one writes to them, they are completely forgotten. Now it is known that the letters of the wife of David Chernoglos are destroyed before they are delivered. Fedoroy and Kuznetsov have not received letters from their relatives during the past two months, while they are being continuously written. On the other side, the letters from the camp do not reach destination to their relatives while the administration usually indicates they are not responsible for the loss. The wife of Murjenko has not received any news from her husband in three months and this is especially strange because the post, under normal conditions works quite efficiently. It was maliciously declared to Boris Penson's mother that the supervisor suggested to her son that he write regularly so that his mother would not worry. When he did write regularly, however, the letters were lost as in many cases.

The educational work within the labor camp compound was well funded which is incomprehensible. Why should education in the spirit of Soviet morality be given to Jews who forever wish to leave the Soviet Socialist Republic and live under different conditions. Once a week political classes take place to which attendance is mandatory while one's absence is punishable. The leader "educator" also works for the "section of internal order." He carefully scrutinizes the attendance and activity at the time of these classes. In the process of education the work does not stop even in view of the opposing national and self determination and religiousness of the confined Jews. Another sentence, I recall now—Josef Mendelevitch and how they persecuted him to wear a skullcap which for a religious is a very necessary part of his religion. Lazal Fachterberg was forbidden the reading of an annual prayer to his deceased mother, the Kaddish, because they have forbidden his receiving from home a Siddur or Bible in order to intercept the possibility of religious agitation in the confines of the Labor Camp which is a heinous crime under the condition of everyday atheist propaganda.

In the educational objectives for the inmates, it is forbidden to receive books from friends and relatives even through the special "book by mail" organization. The orders on literature frequently are left on the table of the censor, while this is difficult to explain why the books published in the Soviet Union are forbidden to the inmate? In addition, one can neither receive nor order newspapers of the friendly socialistic countries.

How strange that there is a pretension to the Jews to study Hebrew. Captain Patchugan had a discussion with Mogilever on this subject. On the question of why Americans, Ukranians, Latvians, and other nationalities are permitted to study their native tongue, the chief of operations replied: "They belong to their own nationality where as you do not," and "furthermore you Russian Jews must speak only in Russian." During the conversation, Captain Pitchugan has expressed in angry and offensive terms about the Hebrew language and writing and offended the human and national aspirations of Vladimir Mogilever.

The offensive incident with the illness of Jacob Suslensky, due to his study of the Hebrew language, was refused entrance to the hospital. I have already described. For what and due to whom is all this necessary? The prisoners of other nationalities do not have to endure these painful aforementioned experiences. The desire to learn one's language and literature, Major Sorokin from Camp 19 has claimed is Zionism, which, under the conditions of the anti-Zionistic campaigns, one can evaluate as a direct threat while it seemed that the Jews are ready to carry through and not be denied their goals.

FINANCIAL STATEMENT OF SENATOR AND MRS. CASE FOR 1971

Mr. CASE. Mr. President, I ask unanimous consent to have printed in the RECORD the combined statement of Mrs. Case and myself of our assets and liabilities at the end of 1971 and our income for that year.

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

Financial statement of Senator and Mrs. Case, Mar. 30, 1972

ASSETS

Cash in checking and savings accounts (after provision for Federal income tax for '71), approximately	$60,000
Life insurance policies with the following insurers (currently providing for death benefits totaling $138,500):	
U.S. Group Life Insurance.	
Aetna Life Insurance Co.	
Connecticut General Life Insurance Co.	
Connecticut Mutual Life Insurance Co.	
Travelers Insurance Co.	
Continental Assurance Co.	
Equitable Life Assurance Soc.	
Provident Mutual Life Insurance Co. of Philadelphia.	
Cash surrender value	$49,556
Retirement contract with Federal employees retirement system (providing for single life annuity effective Jan. 3, 1973, of $28,236 per annum.) Senator Case's own contribution to the Fund total, without interest	41,072
Annuity contracts with Teachers Insurance and Annuity Association and College Retirement Equities Fund. As at Dec. 31, 1971 these contracts (estimated to provide a life annuity effective January, 1973 of $1,541.) had an accumulation value of	14,364
Securities as listed in schedule A	436,961
Real estate: consisting of residence building lot on Elm Avenue, Rahway, N.J., and house in Washington, D.C. (original cost plus capital expenditures)	72,200
Tangible personal property in Rahway and Washington, estimated	15,000

LIABILITIES

None.

INCOME IN 1971

Senate salary and allowances, $42,732, less estimated expenses allowable as income tax deductions of $5,634 (actual expenses considerably exceed this figure)	37,098
Dividends and interest on above securities and accounts	18,789
Lectures and speaking engagements: CPC International Plaza Club	1,000

SCHEDULE A.—SECURITIES

Bond and debentures of the following, at cost (aggregate market value somewhat lower):

	Principal amount
American Telephone & Telegraph Co.	$12,000
Cincinnati Gas & Electric Co.	4,000
Consolidated Edison Co. of N.Y.	5,000
Consumers Power Co.	5,000
General Motors Acceptance Corp.	5,000
Iowa Electric & Power Co.	5,000
Mountain States Tel. & Tel. Co.	5,000
South Western Bell Telephone Co.	5,000
Toledo Electric Co.	5,000
Total	51,205
Stocks (Common, unless otherwise noted) at market	385,756
	No. of shares
American Electric Power Co.	919
American Natural Gas Co.	548
American Tel. & Tel. Co.	200
A.T. & T. Warrants	20
Cities Service Co.	144
Combined Insurance	42
Consolidated Edison Co. of N.Y., $5 pfd.	50
Continental Can	38
Detroit Edison Co.	100
DuPont	40
General Electric Co.	240
General Motors Corp.	270
Gulf Oil	140
Household Finance Corp. $4.40 Cum. Conv. pfd.	100
International Business Machine Corp	128
Investors Mutual, Inc.	2,686
Kenilworth State Bank	25

Litton Industries	91
Madison Gas & Electric Co	275
Marine Midland Corp	563
Merck & Company, Inc	200
Mid-Continent Telephone	80
Morgan, J	22
National Community Bank, Rutherford	600
Owens-Illinois	80
Reynolds Industries	100
Tri-Continental Corp	1,522
Union Carbide	48
Union County (N.J.) Trust Co	1,157
Warner-Lambert Pharmaceutical Co	260

WYOMING STUDENTS ACUPUNCTURED

Mr. HANSEN. Mr. President, much has been printed in the United States concerning the Chinese practice of acupuncture, especially since President Nixon took certain initiatives and was able recently to breach the Bamboo Curtain of the People's Republic of China.

I was interested to learn from an article written by Alice Moeller, a staff writer for the Branding Iron, at Laramie, that this method of pain relief is in use by Dr. Victor Henry in the treatment of some students at the University of Wyoming.

Mr. President, in view of the recent progress made in U.S. relations with China, I believe that the article and Dr. Henry's comments are of interest. I ask unanimous consent that they be printed in the RECORD.

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

OLD CHINESE ART: MEDIC PRACTICING ACUPUNCTURE

(By Alice Moeller)

The Chinese have been practicing the medical art of acupuncture for thousands of years. Although it is a known method in Europe, it is fairly unfamiliar in the U.S. Dr. Victor Henry, health service, is beginning to use this method to treat students.

"The method is based on placing small needles under the skin to stimulate nerve endings," he said. "It is not a method of curing all ills but it can relieve pain."

The method is safe only for those who know anatomy and where these nerve endings can be located around the body.

"Acupuncture is safe because you're not injecting anything into the body or damaging tissue," Dr. Henry said. "The nerve endings lie about one-eighth of an inch below the skin which means we don't bother muscles in the process."

He has treated four patients so far. One was a failure "which I expected even before I began the treatment but the patient wanted to try," he said.

This is a good record considering he has been using the treatment for one week.

He would not use the treatment where tissue changes have taken place such as with cancer or epilepsy. But it has been used to relieve the pain in arthritic joints. It has been thought that by stimulating points of the liver, infectious mononucleosis can be short lived.

"To me the uses of acupuncture are an advantage when used together with other forms of medicine," he said. "Antibiotics and surgery are also necessary to modern medicine, although in China acupuncture is a complete medical system."

In China the treatment is used as a substitute for anesthetics but this has not completely been understood by Western doctors. With the increased exchange with China, Dr. Henry said, this too should become more well-known and accepted.

"The reasons for acupuncture not being more widespread in the U.S.," he said, "is that we have been shut out of China since World War II and the whole method runs counter to the anatomy and physiology of the West. This is rather hypocritical because doctors prescribe aspirin and not that much is known about how it works."

One of Dr. Henry's patients had a sprained ankle. The needles were placed on nerve endings both above and below the sprain to relieve pain. This could also be used for a broken leg to relieve pain after the leg is set.

A more miraculous example was in a New York clinic where a doctor was unable to lift his arm above shoulder level. He had been receiving treatment for one year with no results until he had one treatment of acupuncture. Afterwards he was able to touch his head.

Dr. Henry is the only doctor in Laramie to use acupuncture treatments. He just recently returned from a week of work in New York on perfecting his treatment. He says that the needles are so fine that they cannot show up in a photograph.

NONRETURNABLE STEEL DRUM USE SHOULD BE DISCOURAGED

Mr. RANDOLPH. Mr. President, litter on our streets and highways, and in our parks and recreation areas, in our countryside, is of national concern. In response, several States have passed legislation concerning this public-arousing problem, legislation directed at beverage containers—beer and soft drink containers, bottles, and cans.

The concept of "throwaway"—"use and discard"—has now been extended to 55-gallon steel drums. In effect, the steel drum manufacturing industry has created a 55-gallon beer can and the cost of disposal has been transferred from the private or industrial waste disposal cycle to potentially public, solid waste disposal systems.

Since its formation in 1963, the Subcommittee on Air and Water Pollution has received extensive testimony and considerable information concerning the potential environmental problems associated with solid waste disposal. The culmination of this effort was the enactment of the Resource Recovery Act of 1970. I had the responsibility to chair the Senate-House conference on this needed legislation.

During these hearings, a great deal of emphasis was placed on the recycling of containers and, especially, the land pollution and esthetic problems caused by the increased use of throwaway beer cans and soft drink bottles. Another major area of discussion was the problem of abandoned automobile hulks, which are not only a menace to the beauty of our countrysides, but also are a waste of natural resources.

The concept of reuse received little emphasis during those hearings; most of the expert witnesses presented testimony on how recycling could be employed to accomplish major gains in the fight against pollution. Yet the concept of reuse, whether encouraged by public policy through the establishment of disincentives, as proposed by Senators NELSON and JAVITS, or by production controls, was not fully explored. The idea of disincentives, as was pointed out at that time, would naturally require action by the Senate Finance Committee. That does not, however, preclude a proper discussion of disincentives before the proper environmental committees of the Congress so that they can acquire the background they need to carry out their responsibilities.

During the next 2 years, the Public Works Committee will initiate hearings that will shape future public policy regarding the reuse and recovery of resources. It is my purpose at this time to call attention to the fact that a complete review and analysis will be made in these hearings of the potential for reuse of products and containers as a means for conserving our disappearing natural resources, as well as a means for effective environmental quality management.

One facet of the reuse concept was alluded to in my prefacing remarks. In 1970 the committee received a letter from the National Barrel and Drum Association—NBADA—a trade association with over 150 members who operate plants that clean 55-gallon steel drums so that they may be reused over and over again—volume IV, beginning at page 2125. In its letter, the association commented that it is, after all, "a service industry; it does not manufacture new drums, it has no voice in the policymaking of those who do. It exists only to receive the used drum and to prepare it for reuse."

The drum reconditioning industry had its real growth during a period of national awareness of the dangers of destroying our natural resources. During World War II, and the Korean war, the War Production Board and the National Production Authority issued rules that made it impossible to buy new drums unless the user had made every effort to use already manufactured drums until their useful life had been exhausted. Only then could he buy new drums.

Now, we have come full cycle. The new steel drum manufacturing industry has moved into the production of nonreturnable steel drums that have limited reuse capability. I must question the implication of this practice for resource conservation and, even more specifically, its consistency with the aims and objectives of the public policy enunciated in the Resource Recovery Act of 1970.

In the New York Times, on January 2, 1971, there was a story from Anchorage, Alaska, that started out as follows:

In Alaska the main litter problem is not empty beer cans but discarded oil drums. At Barrow on the Arctic coast, about 48,000 of the metal barrels are scattered about the tundra. In the winter, these barrels are frozen into the soil or ponds and covered with snow. In the summer, the tundra thaws to a soggy consistency that makes it impractical to use vehicles to remove the barrels.

In the Time magazine for October 25, 1971, there was a picture of littered oil drums on the Aleutian Island of Amchitka. The article talks of an "oil drum culture" and notes that over a million such drums are scattered along Alaska's north coast.

This is the "environmental decade" and the drum reconditioner satisfies an important environmental function. When drums are left to rot, they con-

tain residue of acid, paint, or chemical, which ultimately are released into the environment. The drum reconditioner performs the first step in abating this potential environmental problem when he cleans the residue out of used drums. At that time, he collects the residue and sludge deposits in the drum and disposes of it in accordance with developing environmental practices.

The traditional standard 18-gage steel drum can be reused over and over again for as many as 10 or 15 times. A lighter weight, 20/18-gage drum can usually be reconditioned two or three times. However, a lighter-weight, new-type drum, known as 24-gage or Monostress, has now been put on the market as an intended "throwaway" or a "single use" drum. After one use, it has no further functional value. If society is lucky, these drums will end up in a scrap yard where they can be recycled, but even then the disposal cost must be borne by the taxpayer.

At other times, however, it may very well end up as an unsightly 55-gallon blot on our Nation's countryside.

I have used the analysis of the steel drum to illustrate the need for the Subcommittee on Air and Water Pollution to take a close look at the concept of reuse, both as it relates to the conservation of our national resources and as a valuable tool for enlarging the effort to protect the world in which we live.

Prior to hearings next year, the Public Works Committee intends to review business practices which encourage single-use consumer products such as the steel drum. The committee also will provide for Federal guidelines which will serve as disincentives to such practices in order that the public interest can best be served.

Just imagine, if you can, a six-pack of 55-gallon "throwaway" cans.

HEALTH OF CHILDREN AND YOUTH

Mr. MONDALE. Mr. President, I have asked for time to speak this morning in order to bring to the attention of the Senate the little-publicized recent decision of the Committee on Finance to postpone and dilute a program that is of vital importance to the health of millions of poor children.

I refer to the requirement for "early and periodic screening, diagnosis and treatment" of health problems of children covered by medicaid. The committee action took the form of amendments to H.R. 1, the administration's proposed welfare and social security legislation.

On March 7, the committee announced that it had voted to postpone the effective date for the screening of all eligible children and youths by 2 years—from July 1, 1973 as now required by the Department of Health, Education, and Welfare, to July 1, 1975. HEW regulations specified that services for children from 0 to 6 years old be available on February 7, but gave the States until July 1, 1973, to phase in programs for dependents up to age 21.

In addition, the committee announced that under an amendment it adopted States would not be required to offer additional medical treatment for diseases discovered by the screening process. The HEW regulations specifically require the States to provide eyeglasses, hearing aids and certain kinds of dental care for children and youth regardless of whether such services were provided to other medicaid recipients.

As a result of the Finance Committee's action, children in as many as 18 States could be deprived of eyeglasses they need; in 25 States, they could go without needed hearing aids; and in 17 States, without certain dental services they require.

The decision by the Finance Committee only compounds a grievous injustice which has already been done to the estimated 11 million children from infancy to age 21 who are potentially eligible for these health services.

For the program that the committee has chosen to postpone and dilute was approved by Congress in 1967 and has only begun to go into effect in the last month or two. It took the Department of Health, Education, and Welfare nearly 4 years to develop and publish regulations to guide the States in setting up their programs.

In the meantime untold numbers of children from families who cannot afford private health care have gone without a physical exam; without dental care; without a test to determine whether they require eyeglasses or a hearing aid, without a test for anemia or diabetes or malnutrition. We can never know how many children have suffered and may suffer for the rest of their lives because these opportunities were not available to them.

We can guess the effects from the report of screening done in Mississippi, one State which went ahead and implemented its own program despite the delay of HEW in promulgating regulations. In Mississippi, examination of 1,178 youngsters revealed 1,301 "medical abnormalities." These included 305 cases of multiple cavities, 241 cases of anemia, 97 cases of faulty vision, 217 cases of enlarged tonsils, and significant numbers of cases of hernia, intestinal parasites, and poor hearing.

For years the Department of Health, Education, and Welfare dragged its feet in implementing this program. Finally, in November of last year, the Department issued regulations directing States to initiate their programs by February 7, 1972. I ask unanimous consent to have printed at this point in the RECORD the correspondence which I have had with Secretary Elliot Richardson concerning the implementation of the program.

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

FEBRUARY 18, 1972.

Hon. ELLIOT L. RICHARDSON,
Secretary, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. SECRETARY: I have a strong interest in the progress of the early screening and diagnosis program for children under Medicaid.

I would appreciate it if your office would provide me with answers to the following questions about the program by the close of office hours on March 1.

1. How many states actually had programs operating on February 7, the deadline for implementation? Which ones did not?

2. How many states have made submissions (preprints, manual information, etc.) describing their programs and indicating their compliance with the HEW regulations? Which ones have not? What is being done by HEW to assure that this information is submitted?

3. How many states and which states have chosen the option of providing services for children only to age 6 immediately and working toward providing them for persons to age 21 by July 1, 1973? Please indicate the stages in which each State that has postponed service for 21 year olds will work toward the deadline.

4. How many States have been ruled in compliance with the regulations? Which ones have not? Why? Please list by State.

5. According to the information you have received, which States are not providing any of the services listed under Point 4 of the "Requirements" in the Medical Assistance Manual guidelines ("medical history . . . assessments of immunization status and updating immunization")? What is being done to institute these screening services in States that do not have them?

6. Under Point 4 as described above, are States required to test for sickle cell anemia? Lead paint poisoning? Diabetes?

7. How often must a child be examined under HEW's definition of "periodic"?

8. Would you please submit drafts or final versions of the "comprehensive guidelines" that are scheduled to replace the "interim guidelines"?

9. What efforts are being made by the States to assure that all eligible children are receiving the benefit of this program? Please list by State?

10. What arrangements have the States made to assure that when a health problem is identified the child receives the proper treatment? Please list by State.

11. What requirements has HEW adopted to discover how many poor children are now receiving early screening and diagnosis services in each State, and how many will receive them in the future years? Please submit available statistics.

Thank you for your cooperation.

Sincerely,

WALTER F. MONDALE.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., March 23, 1972.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: Thank you for your letter of February 18 inquiring about progress in the early screening and diagnosis program for children and under Medicaid.

Enclosed (Attachment A) is a copy of a summary of data from a survey which was conducted through Regional Offices of the Medical Services Administration shortly after the effective date of the early screening regulation. Based on this source and other information obtained by MSA, I will respond to your questions in the order they are presented.

1. We know that Kansas, Maryland, Mississippi, Tennessee and Virginia had operating programs on February 7. Alabama, Connecticut, Nebraska and Oklahoma had claimed earlier that they had programs. We are actively engaged in following up with each State to ascertain the status of their program and assist them in getting underway.

2. As of February 7, 1972, 15 States had submitted plan amendments indicating their compliance with the regulations, 34 had not, and on three we had no information. Our Regional Offices are following up with the States to see that the necessary plan amendments are submitted.

3. Regarding coverage by age group, our in-

formation relates to States' intentions, not their actual plans (except for the 15 States that had submitted plan amendments and Mississippi, Tennessee, and Virginia). As of February 7, 20 States intended to include all ages up to 21, 6 States would cover ages up to six, one State would cover up to 12, and information was uncertain on 15 States.

4. No States have been ruled out of compliance with the regulations. Under the procedure established by the Social and Rehabilitation Service (which administers the Medicaid program through the Medical Services Administration), the SRS Regional Commissioners submit a quarterly report on States' compliance with SRS regulations. The next such report will reflect status of State programs as of March 31, 1972.

5. We do not have information regarding which States are not providing any of the services listed under Point 4 of 'Requirements" in MSA's interim guidelines. We will be obtaining this information through our Regional Offices in the process of preparing the March 31 compliance report. We will also get information on what steps States are taking to initiate various screening services.

6. Point 4 does not require States to test for sickle cell anemia, lead-based point poisoning, and diabetes. The proposed content of the screening program is under close study in connection with the development of the final guidelines which will be issued to the States.

7. We will interpret the meaning of "periodic" in the comprehensive guidelines. Our present view is that periodicity will vary with respect to the condition being screened. For example, screening for sickle cell anemia needs to be done only once, and screening for lead-based paint poisoning should be done between one and six years of age, but does not need to be done thereafter.

8. We will be pleased to submit drafts of the "comprehensive guidelines" as soon as they are ready. We hope this will be within the next month.

9. Again, we do not have an inventory of States' efforts to assure that all eligible children are receiving the benefit of the program. This is another item which our Regional Offices will canvass for the March 31 compliance report. We can report, however, that in one or more States eligibility workers inform families of the screening program when their eligibility is established; letters are sent to current AFDC families informing them of the programs; and State and local agencies are developing outreach programs with staff of Head Start, Maternal and Child Health Services, and other community agencies.

10. We do not know what arrangements States have made to assure that children will receive proper treatment for identified health problems. Our final guidelines will suggest various measures. It must be borne in mind that under the final regulations the States are required to provide only such treatment as falls within the amount, duration, and scope of services set forth in the State's Medicaid plan, plus treatment for visual, hearing, and dental care if those items are not included within the regular items of service covered by the plan.

11. SRS's Division of Program Statistics and Data Systems is modifying its quarterly data collection and reporting system to include specific information on numbers of children receiving early screening starting with the current quarter. Projections of future coverage will be made by MSA's Office of Program Planning and Evaluation. SRS also has authorized conduct of a research and demonstration project this year on the evaluation of early screening programs, one product of which will be the development of means of identifying and recording data on diagnosis and treatment of children screened.

I appreciate your interest in the progress of the early screening program, and I wish to assure you that we will do our best to see that it is effectively implemented by the States. In the coming weeks we will be devoting increasing attention to the preparation of the final guidelines, the provision of technical assistance to the States, and monitoring their activities in carrying out the program in full accord with the statute and regulations.

With kindest regards,

Sincerely,

ELLIOT RICHARDSON,
Secretary.

ATTACHMENT A

ANALYSIS OF STATUS OF STATES IMPLEMENTATION OF PR 40-11(C-4) AS OF FEB. 7, 1972—EARLY SCREENING, DIAGNOSIS, AND TREATMENT

	Plan amendment submitted to regional office		Form in which the amendment was submitted		Age group elected, Jan. 1, 1972	Problem areas identified as precluding proper implementation and coverage
	Yes	No	SRS preprint	Other		
Total	15	34	9	6	15—NA; 16—0 to 6; 20—0 to 21; 1—0 to 12	
Region I:						
Connecticut		X			NA	
Maine		X			NA	
Massachusetts		X			NA	
New Hampshire		X			NA	
Rhode Island		X			NA	
Vermont		X			NA	
Region II:						
New Jersey	NA	NA			NA	
New York		X			0 to 6	
Puerto Rico	NA	NA			NA	
Virgin Islands	NA	NA			NA	
Region III:						
Delaware		X			NA	State plan omits dental care.
District of Columbia		X			NA	Unknown.
Maryland		X			0 to 6	State plan omits hearing aids.
Pennsylvania		X			0 to 6	No drugs for medically indigent only.
Virginia		X			0 to 21	State plan omits dental care.
West Virginia		X			NA	State plan omits dental care.
Region IV:						
Alabama	X		X		0 to 6	
Florida		X			0 to 6	
Georgia		X			0 to 6	
Kentucky		X			0 to 6	
Mississippi		X			0 to 6	
North Carolina		X			0 to 6	
South Carolina	X			X	0 to 6	
Tennessee		X			0 to 6	
Region V:						
Illinois		X			0 to 21	
Indiana		X			0 to 21	
Michigan		X			0 to 21	
Minnesota		X			0 to 21	
Ohio	X		X		0 to 6	
Wisconsin		X			0 to 21	
Region VI:						
Arkansas	X		X		0 to 21	
Louisiana	X		X		0 to 6	
New Mexico		X			0 tf 6	
Oklahoma		X			0 to 21	
Texas		X			0 to 6	
Region VII:						
Iowa	X		X		0 to 12	
Kansas	X			X	0 to 21	
Missouri	X		X		0 to 6	
Nebraska	X			X	0 to 21	
Region VIII:						
Colorado		X			NA	State plan excludes eyeglasses, dental care.
Montana		X			0 to 21	
North Dakota	X		X		0 to 21	
South Dakota		X			NA	State plan excludes dental care.
Utah	X		X		0 to 21	
Wyoming		X			NA	State plan excludes dental care, hearing aids, eyeglasse

ATTACHMENT A—Continued

ANALYSIS OF STATUS OF STATES IMPLEMENTATION OF PR 40-11(C-4) AS OF FEB. 7, 1972—EARLY SCREENING, DIAGNOSIS, AND TREATMENT—Continued

	Plan amendment submitted to regional office		Form in which the amendment was submitted		Age group elected, Jan. 1, 1972	Problem areas identified as precluding proper implementation and coverage
	Yes	No	SRS preprint	Other		
Region IX:						
American Samoa						
Arizona						
California	X			X	0 to 21	
Guam	X			X	0 to 21	
Hawaii	X			X	0 to 21	
Nevada		X			0 to 21	
Trus Territory						
Region X:						
Alaska						
Idaho		X			0 to 21	
Oregon		X			0 to 21	
Washington	X		X		0 to 21	

Mr. MONDALE. Mr. President, I think that this correspondence makes it clear that even with 4 years in which to gear up, HEW has very little idea of whether programs are actually operating in most States or of the nature of the services offered. On March 23, more than 6 weeks after the effective date, the Secretary wrote to me that only five States definitely had programs operating on February 7. Four States "had claimed earlier that they had programs," the Secretary wrote. What about the other 41 States?

Other crucial information that is lacking includes whether the States are taking steps to see that all eligible children are receiving the benefits of the program, and to insure that youngsters with health problems actually receive treatment for them.

I cite these deficiencies in the HEW effort to establish and monitor the programs as evidence that acceptance by the full Senate of the Finance Committee's amendments might kill this worthwhile and sorely needed program permanently.

It is obviously from the lack of information in the Secretary's response to my letter that the Finance Committee has made its decision without even knowing the scope of the financial burden implementation of the program has placed on the States. The American Academy of Pediatrics tells me that preventive health care for young people is the best insurance against development of chronic, expensive health problems in later years.

Further postponement and dilution of the requirements for State efforts—in the face of the incredible delays already tolerated by the Congress—can only be expected to signify an abandonment of congressional commitment to the program it authorized.

We have a hard enough time as it is passing the kind of legislation needed to assure a good life to the American children who are born in poverty. The very least we can do for them is offer the prospects of a healthy childhood and youth so that they will have a fair chance at an education and at the other opportunities that can ultimately help them break free of the poverty cycle.

When the committee version of H.R. 1 reaches the Senate floor, I intend to offer amendments to assure that the "early and periodic screening diagnosis, and treatment" program is both preserved and implemented.

I call Senators to support me in this effort.

VANDERBILT TELEVISION NEWS ARCHIVES AVAILABLE TO THE PUBLIC

Mr. HANSEN. Mr. President, Vanderbilt University has undertaken what I believe is a significantly important role as the caretaker and recorder of the television news programs of America. These programs, in my opinion, may be an important part of the visual record of the history of our times.

The Vanderbilt archives made it possible in the spring of 1971 for Members of Congress, newsmen, and commentators, and the general public to view in the Senate Office Building the news coverage by the major networks of the Laos incursion by troops of South Vietnam.

The administrative consultant to the Vanderbilt Television News Archives, Mr. Paul C. Simpson, has notified me that the programing available at Vanderbilt has been cataloged and published in a periodical called Television News Index and Abstracts.

To describe briefly the purpose of the index, I quote the following from Mr. Simpson's letter:

> We hope to publish this monthly. At this time we are distributing approximately 275 copies throughout the United States to individuals, institutions, and organizations. We believe that these index and abstracts will serve two extremely useful purposes. We believe that they will give a quick review as to what has been shown on the television network news programs. We also know that they will serve as an extremely useful guide to the Vanderbilt Television News Archives collection of videotapes which extends back to August 5 1968.

Mr. President, the Vanderbilt Television News Archives is a nonprofit enterprise of the university. It comprises a videotape collection of the evening news broadcasts of the three major television networks—ABC, CBS, and NBC. The programs are videotaped each day off the air as they are broadcast in Nashville, Tenn.

The collection is available for use at the archive, for a nominal viewing fee, and on a rental basis for use elsewhere.

Mr. President, I believe this availability is of considerable interest nationwide, and those who are interested in access to the collection should write to Mr. James P. Pilkington, Administrator, Vanderbilt Television News Archives, Joint University Libraries, Nashville, Tenn. 37203.

HOW DEFENSE DEPARTMENT BEATS THE TAXPAYER

Mr. PROXMIRE. Mr. President, on Tuesday the Chief of Naval Material Command came before the Joint Economic Committee to testify on ship claims as well as other procurement.

In the course of Admiral Kidd's testimony I asked him about the orders he had received from Admiral Zumwalt to speed up spending and get rid of appropriated money.

Mr. President, the story of this hearing is about as devastating an indictment of service waste as I have ever heard—and I have heard plenty in the 5 years I have been in the Senate.

For this reason I ask unanimous consent that the transcript of the hearings be printed in full in the RECORD at this point.

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

ACQUISITION OF WEAPON SYSTEMS, PART 6

(Tuesday, March 28, 1972)

The Subcommittee met, pursuant to recess, at 10:00 o'clock, a.m., in Room 1202, New Senate Office Building, Senator William Proxmire (Chairman of the Subcommittee), presiding.

Present: Senators Proxmire (presiding), and Percy.

Also present: John R. Stark, Executive Director; Richard F. Kaufman, Economist; Loughlin F. McHugh, Senior Economist; Walter B. Laessig, Minority Counsel; Leslie J. Barr, Minority Economist; and E. A. Fitzgerald, Consultant.

Chairman PROXMIRE. The Subcommittee will come to order.

The Subcommittee on Priorities and Economy in Government began studying shipbuilders; claims against the Navy and shipbuilding practices in 1969. The claims problem has grown worse since that time and some of the disturbing aspects of the shipbuilding industry have also been aggravated.

The claims problem became critical when for the first time the dollar volume of claims pending and about to be filed neared the one billion dollar mark. Never in our history had the volume of shipbuilder claims been so high.

In 1969 the Navy "settled" a claim with the Todd Shipyards Corporation for $96.5 million, representing about 90 percent of the face value of the original claim.

This Subcommittee asked the General Ac-

counting Office to investigate the Todd settlement and GAO's findings confirmed our worst fears.

GAO reported that the claim had not been adequately substantiated and that the contractor had not been able to establish a relationship between the costs claimed and the specific actions by the Navy which the contractor alleged caused the costs to be incurred.

On the heels of the Todd fiasco, the Navy in 1969 established a civilian claims review group under the chairmanship of Gordon W. Rule. The purpose of the Rule group was to review proposed settlements of claims in cases where the settlements entered into were $5 million or higher.

The Rule group had a limited function. It could not expedite claims or settle them itself. Its primary responsibility was to see to it that the claims were well supported by the facts so that proposed settlements were reasonable and fair to the Navy.

If the group concluded that a proposed settlement could not be substantiated, it could reject it. The effect of a rejection would be to cause the claim to be sent back to the system command from whence it came for further review and negotiations.

In 1970, the Navy settled a consolidated group of five claims with the Lockheed Shipbuilding and Construction Company for $17.9 million. Because each of the individual settlements was for less than $5 million, it was not forwarded to the Rule group for review.

We asked the GAO to investigate the Lockheed settlement, and the results of that investigation were reported to us and released to the public a few days ago.

Again we find the Navy entering into a very questionable settlement. GAO found in its report that the contractor's alleged delays were either exaggerated or nonexistent in at least two important instances. Lockheed could not relate its additional costs to specific government actions and GAO concluded that "we are not in a position to express an opinion on the reasonableness of the settlement."

In 1971 the Navy entered into a tentative settlement agreement with another shipbuilder, Avondale Shipyards, Incorporated, on one of the largest claims then pending. The proposed settlement was for $73.5 million, and it was forwarded to the Rule group for review.

The Rule group unanimously rejected the claim for a number of reasons, among them the fact that the claim lacked substantiation.

Following that action, some funny things happened to Mr. Rule and the claims review group. First, Mr. Rule, who just a year ago received the highest civilian award given by the Navy, "resigned" from his post as Chairman of the Contract Claims Control and Surveillance Group. Then the group itself was abolished, and a general board composed of flag officers was established in its place. Finally, Avondale was given a "provisional" settlement of its claim in the amount of $25 million. The circumstances surrounding these actions constitute a major reason for this hearing.

Another and perhaps overriding reason for our inquiry goes back to the Subcommittee's longstanding concern for economy in Government. Earlier this month, former Deputy Secretary of Defense David Packard delivered a speech on receiving the Forrestal Award and in that speech, he made some points that go to the heart of the defense procurement problem. Mr. Packard, it will be recalled, said on another occasion not too long ago that defense procurement was a "mess".

In his more recent speech, Mr. Packard talked about the tendency of contractors to buy into contracts and the way they are bailed out after getting into difficulties. He went on to say: "We are going to have to stop this problem of people playing games with each other. Games that will destroy us, if we do not bring them to a halt."

The games that disturb me most are the games that bureaucrats play with the taxpayers' money, particularly the games of spending dollars that do not need to be spent. It is perfectly clear to me that the Department of Defense spends too much, too fast, and there is evidence that getting rid of funds appropriated to it is a Pentagon policy.

Our witnesses this morning are Admiral I. C. Kidd, Chief, Naval Material Command, and Gordon W. Rule, Director, Procurement Control and Clearance Division, Naval Material Command.

Admiral Kidd commissioned and commanded the Navy's first all missile squadron, Destroyer Squadron 18. He subsequently served for over four years as Executive Assistance and Senior Aide to the Chief of Naval Operations; as Chief of Logistics at NATO Headquarters in Naples, Italy; commanded Cruiser Destroyer Flotilla Twelve and the First Fleet; and commanded the Sixth Fleet from 28 August 1970 to 1 October 1971.

Admiral Kidd's decorations include the Distinguished Service Medal with Gold Stars in lieu of Second Award, Legion of Merit with two gold stars in lieu of Second and Third Awards, and Bronze Star.

Gordon Rule has testified before this Subcommittee on several occasions, and we are glad to have him appear before us once again.

Admiral Kidd, you may proceed with your statement.

STATEMENT OF ADM. I. C. KIDD, CHIEF, NAVAL MATERIAL COMMAND; ACCOMPANIED BY GORDON W. RULE, DIRECTOR, PROCUREMENT CONTROL AND CLEARANCE DIVISION, NAVAL MATERIAL COMMAND; REAR ADM. R. G. FREEMAN III, DEPUTY FOR PROCUREMENT AND PRODUCTION, AND HART T. MANKIN, GENERAL COUNSEL

Admiral KIDD. Thank you very much, Mr. Chairman. I appreciate very much indeed your invitation to appear before your Committee today, sir, and respond to questions on shipbuilding claims and related shipbuilding matters.

Accompanying me this morning in addition to Mr. Rule is Rear Admiral Freeman, the Navy's Deputy for Procurement and Production.

Because your topic is broad, I will keep my formal remarks brief.

I do not plan to cover the specific actions that have been taken in the claims prevention area—I believe Rear Admiral Sonenshine covered these for you in his testimony before your Committee last September. The GAO has recently examined this area and concluded that those aspects of the Ship Construction Improvement Program (SCIP) that relate to claims hold considerable promise for managing our overall claims problem. If you or members of your Committee have questions on these actions I will be pleased to try to respond to them.

Let me assure you that since assuming command of the Naval Material Command four months ago, I have devoted a great deal of time to our problems in shipbuilding and more specifically, sir, claims.

When I took over, there were several things in this general area that appeared obvious.

First, roughly a billion dollars in outstanding claims, some outstanding for several years is, in and of itself, a problem of tremendous magnitude. There were more claims in the offing, in my judgment.

It was equally apparent that these claims were probably contributing to a feeling of some tension between the Navy and some of our contractors. Moreover, this situation was contributing nothing to our credibility with the Congress and with the American public. This matter requires prompt action—at a time when we need—need desperately—to modernize our fleet. To do this we need a strong and cooperative industry, and, of course, a great deal of Congressional and public support. Having been privileged to command our 6th Fleet in the Mediterranean just prior to coming to Washington this time, where we witnessed daily and at first hand the growing Russian naval capability, let me assure you that our naval capabilities are very much at stake here. The Russians are building fine ships and manning them with competent personnel—men that evidence a very complete knowledge of the ways of the sea.

Of concurrent concern to me—and I am being very candid now—was the fact that reflections of this relationship between industry and Government were becoming evident within the Navy. I found a wide divergence of views on how some of our claims problems should be handled—experienced and dedicated men, civilians and military, exceptional knowledgeable individuals—brilliant men—professionals, in every sense of the word—each with strong feeling. One of my first tasks was to address this matter. As the Chief of Naval Material that was my job. It was not a question of deciding which one of these gentlemen was correct—they were all right because they wanted this enormous claims problem resolved. It was simply a matter of how best to proceed, considering the many ramifications of the overall problem, and keeping the best interests of the Government uppermost in mind at all times.

There seems to be a certain amount of misunderstanding about the actions taken, however. If I may, I would like to describe them to you.

One of the first actions was to establish the Naval Material Command General Board. Its purpose is to provide me with the assistance and advice I need in managing all areas of my responsibility. It helps me in turn to keep the Chief of Naval Operations, Admiral Zumwalt, advised on matters involving weapon systems development, acquisition and, of course, fleet support. You might compare the General Board to the Board of Directors of a very large corporation. The Naval Material Command General Board has 14 permanent members. They include myself, the Vice Chief of Naval Material, two of my principal deputies, my six system commanders, and to insure that we keep abreast of the operational side of the Navy, the Deputy Chiefs of Naval Operations for Logistics, Submarines, Surface and Air also attend. Others, civilian and military, attend General Board meetings and participate when their particular area of expertise of knowledge is required.

I did not establish the General Board to deal with claims, in fact, it was not established to deal with any specific problem. It was established to deal with all matters of policy and common interest. It is the way I have chosen to manage a very complex command—a command that is responsible for spending approximately 60 percent of the Navy's total budget and employs roughly two-thirds of its total civilian work force.

In short, the General Board was established as a forum to provide discussion and advice. Again, let me say it was not established to solve any particular problem but rather to address any and all subjects. Parenthetically, the Navy had a General Board long before World War II for just this purpose to serve the CNO. I have used a General Board to run both the First and Sixth Fleets.

Now to speak a moment about the new Claims Board established this past January. It was in fact in the planning stage prior to my becoming the Chief of Naval Material. The Claims Board is composed of five of the most experienced civilian procurement officials we have in the Navy. It is assisted by

an exceptionally well qualified representative from our Office of General Counsel. The Chairman of the Claims Board is my Assistant Deputy for Procurement. The other procurement members are the most senior civilian procurement officials at our four hardware systems commands.

Their principal function is to review major proposed claim settlements. When their review is completed, the Chairman, or his representative, makes a presentation to the General Board. Then, based on this combined expert advice, the final decision will be made on the merits of the claim. The decision will then be briefed to the Assistant Secretary of the Navy (Installations and Logistics).

An additional responsibility of the Claims Board lies in the area of claims prevention. This Board has overall responsibility for procurement policy and procedural recommendations designed to prevent or minimize claim generating situations. It seemed only logical to me, Mr. Chairman, that when we got this aggregation of talent together that it address itself to preventing claims. Settling claims is only a part of my objective. Preventing new ones is equally important, if not more so.

That, in summary, highlights procedural changes made in the claim settlement area. I consider that our procedures are sound and hopefully should provide the assurance needed to be certain that these claims are being settled properly and promptly.

You might be interested in an example of increases in staffing now being applied to claims in the Naval Ship Systems Command. Subsequent to July 1971, we initiated action to increase the number of Headquarters civilian and military personnel working on claims settlement some fourfold. These people are also receiving increased support on a part-time basis by a large number of legal, technical and contracting personnel from within the Naval Ship Systems Command as well as additional part-time and full-time support by field personnel.

Senator, that concludes my statement. I will try to answer any questions you may have at this time.

Chairman PROXMIRE. Thank you.

Mr. Rule, do you have any observation you would like to make? I know you do not have a statement.

Admiral KIDD. On that statement?

Chairman PROXMIRE. On anything at all you would like to speak on, that statement or anything in connection with it.

Mr. RULE. First, I want to get into a you know what contest with you because of a statement you read in your opening statement. I take strong issue with you, Senator, on how you characterized the Todd settlement. You said it was a fiasco.

I personally approved the Todd settlement and after I approved it, I was given the job by the then CNM, Admiral Gallatin, of making a study regarding the causes of the Todd and I think your Committee has shown that study, and the study indicated only too clearly where the Navy was at fault and why this claim of $96 million had been approved.

You in your characterization, Senator, went far beyond what the GAO said in their comment when they looked at the Todd claim and I just want to say you and I usually get off on a friendly basis but we sure are not getting off today on that basis because you ought not characterize that settlement as a fiasco.

I say that very respectfully.

Chairman PROXMIRE. Well, I know you do, Mr. Rule. You know I have great respect for you. We just disagree on that.

Mr. RULE. And sincerely.

Chairman PROXMIRE. I thought it was a fiasco. People have different views of what constitutes a fiasco. I cannot characterize it as a heinous scandal in which corruption was obvious. I just said it was a fiasco.

Mr. RULE. Senator, I would just like to make this suggestion. The engineer in that case that negotiated and the contracting officer are still around. The people in my office recommended they scrub—recommended approval to me. I scrubbed it. I would like to get those people together in front of you and GAO and go through the motions and show exactly how we evaluated that claim from the bottom up and let you draw your own conclusions.

If we made as lousy a deal as you say we did, I ought to be fired because I believe in accountability.

Chairman PROXMIRE. Mr. Rule, you know I do not want to fire you. Other people seem to have different views on that but I certainly do not.

Mr. RULE. But I would like to go over exactly the mechanizations if at some time you would like that.

Chairman PROXMIRE. Fine. I would like to do it, first at least on a staff level. You obviously are thoroughly familiar with this but I would like to see if we could proceed on that basis first and then maybe we can——

Mr. RULE. OK. Having gotten that off my chest, good morning, Senator. (Laughter).

Chairman PROXMIRE. Thank you, sir. Any further observations?

Mr. RULE. Only that——

Chairman PROXMIRE. It is a good morning, I agree.

Mr. RULE. Yes, sir. It is nice, and I appreciate your asking me back. It is a privilege and I want to say that the gentleman on my left, Admiral Kidd, is the fourth Chief of Naval Material with whom I have had the pleasure of serving and I am very confident that he is going to be an outstanding Chief of Naval Material when he gets through his shakedown cruise which he is on right now.

Chairman PROXMIRE. Admiral Kidd, on page 4 of your statement you describe what you did to handle the job Mr. Rule's group had handled before. You said that the Board that you had is not a claims board primarily. It can take action in this respect but it has many other things it has to do. You said you have a new claims board.

That new claims board, as I understand it, has no decision capacity. It is simply an advisory group, unlike the Rule group which was—it is unable to send back a claim. All it can do is advise you on it, is that correct?

Admiral KIDD. That is my understanding of the way it will operate, Mr. Chairman, yes, sir. The Flag Officer Board and the additional civilians on the regular General Board. That is, the Flag Officers, not the General Board, and the Chief Counsel.

Chairman PROXMIRE. You can understand, I think, Admiral Kidd, why the views up here in Congress may be a little bit different than the views that you and the Administration may hold. We are concerned that a process which seemed to be very loose and which seemed to represent a potential serious threat to the taxpayers' money and to involve large expenditures might be getting more out of control. I had great respect for Mr. Rule and the job they did, even though we differ on that Todd Claim, and with that, with the abolition of the power which that group had and with the abolition—with the shifting of authority from that group to another, and with the principal authority now given to Flag Officers rather than a civilian lawyer with Mr. Rule's background, we are very fearful that the whole process is weakening.

Admiral KIDD. And were I you, not understanding and knowing the details, I think I would probably share your concern, but I would most earnestly disabuse you of any need for concern because in the first place, the responsibility and authority for the earlier claims review group which Mr. Rule chaired drew its authority from the Chief of Naval Material. When Mr. Rule resigned, and I was told that he has resigned when I arrived in Washington, and that the responsibility was mine, would be mine soon, I asked many questions from many gentlemen in and around Washington who had experience in this area, including Mr. Rule himself, for their advice as to how best to proceed.

One of the first gentlemen that I went to and asked was Admiral Rickover, a gentleman whom I have known ever since I was a youngster, and taking all of this advice and putting it together I found that since the final responsibility was mine, I would be well advised to learn and know as much about it before I had to make the decisions on these claims as possible, and it would be prudent to bring together the very best brains in the business, gentlemen experienced in handling claims, gentlemen of the law, experienced in the legal side.

I went to see the General Counsel of the Department of the Navy, sought his advice, invited him to sit with the General Board as I learned of the contributing facets in the matter of claims.

It then became evident that it would be very wise to insure that all claims were shared with the various Systems Commands before a final decision was made so that each of the various Systems Commands, each having a responsibility for reviewing claims of its own, would have an opportunity to see what the other Systems Commands were doing by way of new legal approaches, new technical approaches.

It seemed only wise to be sure that if System Command A had had difficulty in a particular type of claim, that Command B, C, D and E could be forewarned, and I decided to use this forum of the General Board which we already had established as a forum to bring all of this expertise and competence together.

Chairman PROXMIRE. Let me zero in on just why I am disturbed about this. I mentioned the game that bureaucrats play with the taxpayers' money. Let me give you an illustration.

On February 7 of this year, Admiral Zumwalt, Chief of Naval Operations, sent you a memorandum on the subject of fiscal year 1972 outlay targets. Are you familiar with this memorandum?

Admiral KIDD. I believe, yes, sir.

Chairman PROXMIRE. Let me read the first paragraph of this memorandum. It seems to me that Admiral Zumwalt is telling you and the others who were sent copies of the outlay target—let me first read it.

"Fiscal year 1972 outlay targets promulgated by reference A as part of the President's budget for fiscal year 1973 are over $400 million above target in the earlier fiscal year 1972 budget for the OPN, SCN, PAMN, and MILCON appropriations. Difficulty of achieving these targets during the remaining months of fiscal year 1972 fully appreciated but importance of avoiding shortfall in meeting newly established fiscal year 1972 targets to avoid resultant adverse effects on anticipated fiscal year 1973 outlay ceilings dictated need for top management attention. Anticipate any shortfall in fiscal year 1972 outlay target could be translated into program loss under fiscal year 1973 outlay ceiling.

"2. In order to prepare recommendations indicated in paragraph 4–D, Reference A, request your position on the following areas which appear to offer the best potential for meeting fiscal year 1972 and fiscal year 1973 outlay targets."

Now, let me once again say that this is Admiral Zumwalt telling you how he wants you to move ahead and spend the money that is available.

That is, the amounts that are supposed to be spent during fiscal year 1972 have been increased by more than $400 million for various appropriations including appropriations for other procurements, Navy OPN, ship construction, Navy SCN, procurement of air-

craft and missiles, Navy PAMN, and Military Construction. Although it may be difficult to spend enough to reach the new targets in the remaining months of the year, it is important to avoid a shortfall so there will be no adverse effects on the anticipated FY 1973 outlay ceilings. This dictates a need, as the memo says, for top management attention because it is anticipated if the current outlay target is not reached, next year's outlay ceiling may be lowered.

In other words, we have to spend up to the hilt this year so we can have more funds to spend next year.

How do you interpret this paragraph?

Admiral KIDD. I had to study that memo long and hard before I thoroughly understood it, Mr. Chairman, and in a nutshell it underlined once more it is the same type of memorandum, going back through the history books, I found have been written in years gone by.

When we get final approval of our budget and the money actually in hand so late in the fiscal year, it very, very seriously complicates the ability of the Systems Commands to get proper contracts drawn and to get that money actually spent. In other words, we end up so frequently having six months to do what normally a year would be provided to do, fiscal year to fiscal year.

There is nothing in that memorandum that has affected the thoroughness with which we have gone after contract preparation and the attention to detail necessary to insure that as the money is spent, that it is spent properly and technically correctly.

Chairman PROXMIRE. All right, sir. Let me proceed now. The second paragraph says that your position is requested on a number of areas which appear to offer the best potential for meeting the fiscal year 1972 and fiscal year 1973 outlay targets and lists the following, and that is why—so pertinent to claims. (a) Settlement of the claims FY 1972 Vice FY 1973.

(b) Expedites provisional payments on claims and unadjudicated change orders.

(c) Accelerate contract close-outs and subsequent payment of withheld funds.

(d) Accelerate shipping and transportation billing process where services have been rendered but remain unbilled.

(e) Increase use of unpriced purchase orders and fast pay procedures.

(f) Increase source inspection and acceptance of material at receiving activities. Apply prompt processing procedures for materials received for inventory.

(g) Increase in amount, timeliness and coverage of progress payments to contractors from direct appropriations and working capital funds.

(h) Increasing NIF and stock funds expenditures. Investigate advance procurement of shortlead time material where firm NIF and stock fund orders are anticipated, and so forth.

You see, the pressure on you, I do not mean to criticize you but Admiral Zumwalt is indicating they want the highest priorities in settling these claims in a hurry. That is what seems so shocking and so difficult for us to accept in view of the fact that these claims in the past have been so controversial some times not legally supported. The only way you can settle them in a hurry is with a shortcut procedure that is very likely to result in a very substantial loss of taxpayers' money and an unjustified payment.

Admiral KIDD. This might be a conclusion drawn, but I would certainly reassure you incorrectly drawn. The haste which you speak to—I just do not move in a hurry when I am spending the taxpayers' money.

Chairman PROXMIRE. Yes, but you follow the orders of your superior, I am sure.

Admiral KIDD. Within the law, Mr. Chairman.

Chairman PROXMIRE. Well, let me just proceed to say that the Chief of Naval Operations is identifying areas he says you ought to look into in order to achieve new outlay targets. You ought to see if you can settle claims this year instead of next year—accelerate contract closeouts, increase use of unpriced purchase orders and fast pay procedures, increase amount, timeliness and coverage of progress payments, increase military construction payments, and so on.

You are also asked to evaluate the use of unlimited overtime, during the remainder of the fiscal year. In other words, spend, spend, spend, or do you have another interpretation?

Admiral KIDD. Oh, no. You read the words. And now I just mention in passing rather than increasing the overtime, I have cut it by two-thirds.

Chairman PROXMIRE. How about the other areas?

Admiral KIDD. Where I had to cut them, I have.

Chairman PROXMIRE. Can you give us any examples of what you have done in cutting provisional payments or—

Admiral KIDD. Well, in the case of—

Chairman PROXMIRE. —settling claims?

Admiral KIDD. Let us take one of the claims. One of the claimants having one of the large claims has been in to see me, oh, several times urging accelerated settlement. I have told him absolutely not. I would not touch him with a ten foot pole.

Chairman PROXMIRE. Admiral Kidd, I want to follow up on that. You have been a line officer and you are a man with a marvelous military record we are all proud of and all grateful for. In the final paragraph you are asked to comment on the recommendations that I have just read and to make other recommendations.

Did you comment? Did you make other recommendations?

Admiral KIDD. They have been verbal so far, Mr. Chairman, and I have told the Chief where it would be possible to practically conform and comply and in areas where it would not be because you just cannot get stampeded into this type of thing without reaping grievous difficulties.

Chairman PROXMIRE. Can you be more specific? Can you tell us what recommendations you made?

Admiral KIDD. I would be more comfortable if I could provide those specific for the record, Mr. Chairman, rather than trading on a hazy memory.

Chairman PROXMIRE. Can I ask you the Systems Commanders, NAVAIR, NAVELECSYS, NAVPAC, NAVORD, et cetera, NAVSHIP, NAVSUPSYS, if they made recommendations?

Admiral KIDD. Oh, yes, indeed. To me?

Chairman PROXMIRE. Yes, to you or Admiral Zumwalt.

Admiral KIDD. Yes, to me, and we take them under consideration each week when the Board meets.

Chairman PROXMIRE. Can you make those available—can you tell us in general, summarize them and let the Committee know for the record at least, what they were?

Admiral KIDD. I will, indeed.

Chairman PROXMIRE. We would like copies of the original recommendations if we could have them.

By the way, Admiral, I did not notice any mention of the Russian naval fleet or any military requirements whatsoever in Admiral Zumwalt's memo. It was not a matter of our having to do this for the national defense. There was no justification for accelerating the outlays except to reach some preconceived spending goal.

How do you explain that?

Admiral KIDD. Very easily, Mr. Chairman. Everything that the Chief writes, the responsibility to you and to me as taxpayers' to protect us with a property Navy, this is implicit in anything he puts on paper.

In this regard, if we are not able to expend the funds which you gentlemen appropriate for the things that we have asked for, that we need, with which to defend this country, in time, that is, by the end of the fiscal year, it is my understanding that we could stand to lose that money if we do not spend it within the prescribed amount of time. So, we must—and if I were he I would write the same memorandum—we must do our best to insure that we commit those funds within the prescribed period in order not to be put in a position of disadvantage later on by someone being able to say, well, you asked for the money but you did not spend it, so we are going to take it away or cut your budget next year.

Chairman PROXMIRE. From the standpoint of the national interest, I would be inclined to disagree. I think the general taxpayer would certainly go along in the overwhelming majority of cases that should any money be spent that is necessary or essential to defend our country or strengthen our Navy so it can perform its function, but to spend the money just because you may lose it next year seems to me is something you cannot justify, whether it is the Department of Agriculture, Department of Commerce, or the Department of Defense.

Admiral KIDD. In principle I have no quarrel with what you observe, none whatsoever. And I do not think that anyone would have. The simple facts of the matter here in Washington are that you ask for so much. That amount is usually cut several times along the line before final approval and appropriation. So you get xX when you ask for perhaps three or four X. And here we come to the point earlier made, that you only have half the time needed in which to go through the ponderous mechanisms of effectuating contract arrangements.

Chairman PROXMIRE. Well, why would it be such a disaster if you spent only as much as you can fully justify and not a nickel more? Then if you lose that, then you can come back, and it seems to me you can make a much more effective appeal to people like me.

I am on the Appropriations Committee and others who are on the Appropriations Committee—that this is the policy you are now following. This notion of getting rid of money at the end of the year in order that you will not lapse the amount and then be cut in a subsequent year, it seems to me, is playing, as I say, a game with the taxpayer and a game with the Congress that is most unfortunate.

Admiral KIDD. Well, sir, I just cannot agree with you on that in the way in which you put it, getting rid of the money. Heaven knows, we are not getting rid of it. We are doing our level best to get contracts written and it does not come easily nor in short periods of time. We are trying to get contracts written and get that money properly committed, not wasted, not gotten rid of, properly committed.

Chairman PROXMIRE. I would like to ask you about another memo to see if you can throw light on it.

On February 18, 1972, a memo was sent from the Commander, Naval Ships Systems Command, to all offices reporting directly to COMNAVSHIPS on the subject of "accelerated expenditure goals." The purpose of the memo which was signed by K. P. Chesky, Acting Deputy Commander for Plans, Programs and Financial Management Comptroller, was "to accelerate expenditures in the RDT&E and Procurement appropriations." The third paragraph is entitled "action" and it states the following: "Addressees are requested to initiate a review of procedures closely related to the actual expenditure of funds including (a), contract close-out and subsequent payment of withheld funds.

"(b) Processing of payment vouchers including progress payments.

"(c) Prompt processing and certification of DD-250's to paying activities.

"(d) Utilization of 'Fast Pay' procedures.

"This review should encompass the above areas and others that can lead to expenditure acceleration."

Now, this appears to be a memo implementing the note sent by Admiral Zumwalt to you and the Systems Command, is that correct?

Admiral KIDD. I am not familiar with that memorandum that you hold, Mr. Chairman. I am not familiar with that memorandum at this moment, sir. I could provide a response for the record on that, or perhaps—you spoke there as I recall, of contract closeouts. Admiral Freeman here can speak to that. This is within his area of responsibility, if you wish.

Chairman PROXMIRE. Would you like to speak on that, Admiral?

Admiral FREEMAN. Yes, sir. One of the areas in which we have quite a difficult problem is contract close-outs, particularly on research and development contracts, the reason being this is the final voucher. It requires an audit by the DCAA, and some rather complex procedures including such things as termination of patent rights, final equipment deliveries, all items under the contract satisfaction and a portion of the contract withheld until these procedures are in fact successfully accomplished.

Since it is the wind up of a contract it tends to take a low priority of the other things which are among the jobs of the DCAA, Defense Contract Audit Agency, and Defense Contract Administration organizations.

Hence, there are residual dollars in these areas that are properly expended but because we have not gone through the legal and procedural requirements to close it out, the money sits there unexpended.

Chairman PROXMIRE. Well, now, the Chesky memo refers to two documents, Second NAVSMG R 202120Z/02 January 72 and NAVMAT, and the other numbers. I can identify them if you wish.

Can you briefly tell us what these memos say?

Admiral KIDD. No, sir, I cannot at this time, Mr. Chairman.

Chairman PROXMIRE. We just gave you a copy.

Admiral KIDD. Yes, sir, I have the notice. The references I do not have with me.

Chairman PROXMIRE. Can you provide us with copies of the two memos?

Admiral KIDD. I will look into that as soon as I get back, Mr. Chairman.

Chairman PROXMIRE. When you look into it, will you give us the copies of that, provide those copies?

Admiral KIDD. When I get back to the office, yes, sir, I will look at it.

Chairman PROXMIRE. Thank you.

What are the current outlay targets for fiscal year 1972?

Admiral KIDD. Will you repeat that, sir?

Chairman PROXMIRE. What are the current outlay targets for fiscal year 1972?

Admiral KIDD. I do not have those at my fingertips, Mr. Chairman. I will have to provide that for the record.

Chairman PROXMIRE. Can you tell us how those targets were arrived at? You do not have the figures but can you tell us how you went about determining what those targets should be?

I know that you moved into this position since that was done but I am sure you are familiar with how it was done.

Admiral KIDD. As I recall and understand, those targets were arrived at taking the amounts of money that were appropriated for a particular period of time, fiscal year, and then going back to see when—on what calendar date those monies had to be spent by, and adding up those sums of monies that had to be spent, let us say, by 1 July 1972.

Chairman PROXMIRE. When you review your remarks, could you expand on that for the record?

Admiral KIDD. Yes, sir.

Chairman PROXMIRE. What have you done to implement Admiral Zumwalt's instructions as reflected in the memorandum which I read earlier?

Admiral KIDD. We have been meeting—the board meets weekly and this matter is taken up routinely at each weekly session and the Systems Commanders make a report periodically of how well they are doing, and we are not doing too well.

Chairman PROXMIRE. What action has been taken to—what actions have been taken to implement the Admiral's orders?

Admiral KIDD. Each of the Systems Commanders has received a copy. Each of the Systems Commanders has gone into means available to them to address each of the areas identified by the CNO.

Chairman PROXMIRE. Can you cite specific actions which the Systems Commanders and you have decided on taking?

Admiral KIDD. Yes. For example, we have gone with teams of competent contract people from Washington to outlying field activities to look over their books with them, their contracts with them, to see in what areas there is susceptibility to improved capability to commit funds. There has been absolutely not one bit of pressure, not one bit, to, as you earlier said, just get rid of money. I do not do business that way.

Chairman PROXMIRE. Well, if you were in their position and you were visited by your Admiral under these circumstances would you not consider that to be pretty powerful pressure to get rid of that money, spend it?

Admiral KIDD. No, I would not, Mr. Chairman. There is a vast difference between pressure and groups coming out to help and to advise.

Chairman PROXMIRE. Can you give me the additional cost to the taxpayer for the acceleration of spending that has been ordered by Admiral Zumwalt?

Admiral KIDD. Additional cost? No.

Chairman PROXMIRE. Yes. Supposing that order had never been issued. Would there be any difference at all in the amount expended?

Admiral KIDD. None, no, sir. Well, now, wait, you asked two questions. I will go back to the first one. Additional cost to the taxpayer by accelerating the commitment of funds? None.

Chairman PROXMIRE. Well, then, you are telling me that this money would have been spent anyway, so Admiral Zumwalt's order is just useless. It means nothing.

Admiral KIDD. No. No. His memorandum was an urging to insure that we took all available and proper means to commit appropriated funds in appropriate fashion and within the rules.

Chairman PROXMIRE. And absent that memo presumably some of those monies would have lapsed and the taxpayer would save something.

Admiral KIDD. No. The taxpayer would have lost. The taxpayer would have lost, Mr. Chairman, because we would have had to come back again for money for the same things and the way the cost indices are going up now, we would have had to pay more for it.

Chairman PROXMIRE. Then, what you are telling me is that it is perfectly consistent for the Navy to spend money much faster than it instinctively would in order to use up the funds that are available because that serves the taxpayer as well as the national interest. This is a very hard response for me to accept, very hard. If it is true in the case of the Navy, it must be true in the case of all other Departments.

Admiral KIDD. If we have the money in hand at the beginning of the fiscal year, we have the people on board in our contracting offices to do a proper job of writing the contracts and committing the monies within the fiscal year involved.

Now, getting the money as late as normally is the case, we are regularly faced with the proposition of going at forced draft and at a high rate of speed to get these funds committed. So that that memorandum from the Chief is nothing more than a recurring emphasis on the need to use the limited time available to commit the funds appropriated.

Chairman PROXMIRE. Admiral, that is a peculiar kind of economic effect. I have never seen it operate elsewhere.

Senator Percy has another engagement. He is in between engagements and I am delighted he is able to come even for a short time. I will yield to him for so long as he would like to question.

Senator PERCY. Thank you, Mr. Chairman, very much.

I have been very interested, Admiral, in the tail end of the conversation I got in on. I was a naval procurement officer 29 years ago in Washington. I do not think I will ever get over the effect it had on me, that big chart we had up in the Aviation Fire Control Department, where we had a goal to spend money by June 30 of that year, and we got a letter from the Chief of Naval Operations, Bureau of Ordnance, I guess it was, commending us for spending more money faster than any other department.

Chairman PROXMIRE. That was in the war.

Senator PERCY. That was in the war, and coming out of business, I just could not help but feel there was something wrong with a system that speeded up that process that way and caused us to spend money, buying spare parts for the next three or four years when there may be changes that would make those parts obsolete. I never wasted more money faster in my life than I did then and I have been working hard ever since to make it up to the U.S. Government. But I did it under orders.

Now, the Congress must share some responsibility in this respect and it is the system and the procedure. You would think in 29 years we would be able to improve it, and I am somewhat shocked to find that the same incentive system that has gone on, probably the same commendation letters will go out when the money is expended.

Can the Navy, can you as the top officer in these areas of procurement, help us devise a way that we in the Congress can remove this necessity for what must be wasteful expenditure under pressure of time that really would not be done by men of good judgment if they were not under such deadlines and if they would not "lose" the money at the June 30 fiscal year ending unless they did obligate it and spend it, and if you would like to comment on it now, I would appreciate it very much. If you would rather take some time and consider it so that we can take a look at possibilities for legislation that would enable us to rectify what seems to be a built-in disincentive for efficiency.

Admiral KIDD. I can give a very short answer, Senator Percy. I agree with you. Yes, sir, it can be improved upon with your help, you gentlemen up here on the Hill, by not enacting that legislation which was further, as I understand the problem, aggravated by obliging us to lose money at the end of a given period of time, because going around with the contracting officers and looking at the young ladies and gentlemen who are trying to put the words on paper that will permit the expenditure of funds, they are going four bells in a tube and when we get the money late, it is seven days a week. So this costs you and me as taxpayers more money for overtime for these youngsters.

When you are faced with a proposition of losing funds which you have fought hard to get and to justify, by George, the incentive is high to get them committed. There is no question about it. And when you do things in a hurry, you make an abundance of mistakes. There is no question about that, either. If you want it bad, you get it bad.

Senator PERCY. Well, I am the ranking member on the Government Operations Committee of the Senate and I will discuss with Senator McClellan and cooperatively with the Armed Services Committee whether this is not an area that one Committee or the other ought not to take a good look at because it is wasteful and I appreciate your candor on it, and I can understand the human factors involved.

Yesterday, and I am sure you were advised of my inquiries about subcontracting, and the sources of supply available to the Navy—obviously, you are limited if you do not have adequate sources of supply for major components as well as subcontracts and the economic system does not work as well when you are somewhat limited.

I wonder if you could comment on what role the Navy has played and can play if you feel that your sources of supply are too limited in expanding those sources of supply in the economy that has 25 percent idle capacity and five to six million unemployed people.

Admiral KIDD. I agree with your point, Senator. I think that we must get as much business as possible into the small subcontractors. I would parenthetically observe here that with some of the contracts that we have of comparatively recent vintage where we deal only with the prime, that our license to get into the subcontractor area is rather constrained. But as a matter of principle, there is no question but what we should stimulate interest on the part of subcontractors.

I feel a personal obligation to them. I have been told by some primes that this is none of my business but I still feel a personal obligation to them.

I have been disappointed in some of the contracts that we have, finding that in my judgment perhaps too few subcontractors have been looked at for possible help. We can do more and I have a task force within the Material Command going after this particular problem at this time.

I am not going to promise you any remarkable results because I just do not know how much success we are going to have.

Senator PERCY. In one other area that relates to my first question, and I do hope that you can give us some suggestions for what might get us out of this dilemma, is there a possibility that in the area of disposing of surplus material, equipment, lands, and it ranges from acreage to ships, that there again is no incentive on the part of the military services to dispose of these things?

Now, if a system could be devised where if you got rid of a ship, you were able to get rid of a shipyard and sell it to private industry or see that it goes into the public domain for open space lands, that you would get credit for that and you would be taking unused assets and moving them over into an area where you can liquify those assets and use them for something else.

Do you think this would cause the military services to do a lot of housecleaning, look around for things that are not needed or necessary that cost money to maintain right now, but there is no incentive to dispose of them? Can we be helpful in devising such laws as to provide the incentives for you?

Admiral KIDD. I applaud your thought. Of course, the law does not work that way now. We dispose of things and there is no concurring credit back. Would that it were so.

You ran through quite a shoppinglist there of things that—retired ships, and, of course, you know, we are string savers like the next fellow, looking against that rainy day when you might need them and need them quickly.

This in essence is the principle behind our reserve fleet and it has served us well when we needed it, both the reserve fleet and active reserve fleet.

Real estate the same way. The same way. It goes but when it goes, the Navy or whatever the Government service involved is, enjoys no return for that which they have given up.

This would certainly be a very attractive proposition, sir.

Senator PERCY. Particularly when you see very crucial items that you are not doing now and we know because of the Vietnam expenditures in recent years, critical expenditures have not been made, even maintaining the Navy in first class condition, and if you had the ability to move accounts around and if you could not get appropriated funds, you could get funds by disposing of certain things, I think you would have a terrific incentive and an ability to fulfill needs that right now you know should be met that simply are not because of lack of funds.

If I could turn to yesterday's testimony, Comptroller Staats testified yesterday about a Lockheed claim with regard to certain contractors for destroyers, destroyers escorts, hydrofoil, oilers, ammunition ships. In this case Lockheed claimed in excess of 243,000 additional production manhours attributable to late delivery of Government-furnished boilers for the construction of the two destroyer escorts Lockheed contended that delivery of the boilers for one of the ships had been delayed 14 months and for the other ship 7½ months.

Navy found installation of the boilers in one escort had been delayed 48 working days and the installation of the boilers in the other ship had not been delayed at all. The Navy also estimated the delay in delivery resulted from approximately 25,000 manhours of delay compared to Lockheed's estimate of more than 243,000.

Could you tell us how estimates could differ by as much as a factor of ten as was the case here?

Admiral KIDD. No, sir, I cannot. I do not know where those Lockheed numbers came from. I know our auditors disclosed during the claim review that this disparity existed and it was on the basis of identifying this disparity and others that the claim settlement was markedly reduced from the claimed figure in its initial form.

I just would have no comment on why the appropriation would come in of numbers of that size.

Senator PERCY. I wonder if Mr. Rule could tell us whether differences of this kind exist in the area of claims frequently or is this a very isolated case of a difference of fact of this consequence.

Mr. RULE. Senator Percy, it is very typical. It is not unusual at all. The Lockheed case is a very unusual case in that the claim as filed involved nine new construction contracts that Lockheed had procurement from the Navy. On all nine, the only nine contracts they ever had, they lost money. The total claim—

Senator PERCY. Well, at least they were consistent.

Mr. RULE. Yes, sir, and I asked the President once if that did not tell him something, that maybe they ought not be building ships, and he agreed.

The claim of approximately $180 million was exactly the difference between the total of all the contract prices that they had bid—and all these contracts were advertised procurement—it was exactly the difference between that total and what they said it was going to cost them to build the ships. That was the total claim. It was just that simple.

Senator PERCY. Is it possible that the frequency of these differentials simply comes about as a result of rather lax follow-up on this and that they really felt they could get by? There is slippage some place obviously. There is an error some place, estimating, bidding, whatever it may be, they incurred extra costs for some reasons but here they suddenly—it is easy to blame the Government. Is it possible when they do blame the Government that these claims have been allowed in the past with such a frequency that they felt they could get by with it again in this kind of a case where the facts are so contradictory and so easily ascertainable? That is the ludicrous part of it. It is just blatant fraud of some sort here.

Admiral KIDD. Mr. Staats testified yesterday that their records showed that the average of the claims that have been settled were settled at, I believe he said 37 percent of the amount claimed, and this ought to tell you something. This ought to tell you that the claims were almost fraudulent in the first place. Even if they were settled at 37 percent, which seems to me a little high, but even if that is the right figure, to be able to knock off of a claim 63 percent—if we had that sort of over-statement in proposals for new procurement, if people were coming in on new contracts proposals and giving us amounts of money that we would reduce that much, we would yell fraud, believe me.

When we reduce a contractor's proposal by ten or 15 percent, that is high. But when these people come in with these claims and we can settle them at 37 percent, you have got to ask yourself where was the rest, and so far as I am concerned it is just padding and this is why I take a hard-nosed view of claims. Some people do not. This is why I have gotten the American Bar Association, the claims lawyers and everybody else, p.o.'ed at me but I do not care.

I know these things are not correct. I know that they are taking us to the cleaners. And this is why I agree with Admiral Rickover, the claims should not be a negotiation. These people file these big claims and the thing they want to do quickly is sit down and negotiate. I say that they ought not be negotiated. I agree with Admiral Rickover. We ought to look at them carefully, discuss them carefully with the claimant, go over and find the facts, discuss endlessly almost, to be fair, but then we ought to make up our minds what that claim is worth and say this is it. No negotiation.

Senator PERCY. One final question. This may go beyond your province but I do not know where else to ask it.

What has to happen to get a change of management when you have such flagrant violations of managerial procedures, practices, as in this case by the Government constantly bailing out the company in one way or another, and we are finding all sorts of ways the Government is doing this, and using taxpayers money to do it, you see no change in management. This does not occur any place else. We have had major changes in management in the last few days in a situation that was intolerable from the standpoint of losses the company was incurring and this occurs every single day in the normal course of procedure except in the largest Government contractor we have got, with public money being used all over the lost for almost everything being done there, every salary being met, and yet no change in management.

Errors, mistakes, gross mistakes in judgment, misleading statements put in, no change in management. It just keeps going on.

What has to happen? How do we bring about change, then? And that is, of course, what those of us who were so strongly opposed to the Government coming in and guaranteeing loans that banks would have required a change in management if that had not been brought about. But there is no change. The same old team running things in the same old way, it seems.

Mr. RULE. I could not agree more and I testified against the Lockheed loan because I thought it was a dangerous precedent, but I would just like to quote to you as one

suggestion what Mr. Packard said just a couple of weeks ago when he got the Forrestal Award. He said: "What is the solution"—after describing the game playing that goes on between industry and the services—"what is the solution? We are going to have to stop this problem of people playing games with each other, games that will destroy us if we do not bring them to a halt". And here is the point I want to make.

"Let us take the case of the F-14. The only sensible course is to hold the contractor to his contract." And he never was more right in his life. And it is going to be interesting to see if we do.

Senator PERCY. Well, we are certainly going to be interested in a bipartisan sense.

I want to thank you very much indeed, and I apologize for the executive committee that I must go to now but I very much appreciate your being with us this morning.

Chairman PROXMIRE. I agree with so much that has been brought out by Senator Percy in his questioning, not only on what goes on this morning but that we are never going to break our inflationary cycle unless we let the unions strike. Let them strike. This is a free country and it is the only way we can possibly resolve this situation. But we permit wages to go up as we have done with the Wage Board, the same way Lockheed said they are going to go under if we do not bail them out. Let them go. We have got to let free enterprise work, either that or we are going to have to expect to settle for a grossly inefficient operation.

I want to get into some questions with you, Mr. Rule, because I want to pursue what Senator Percy was talking about, but I would like to get back just for one more question with Admiral Kidd before I proceed to some other things.

Admiral, you talk about you being string savers. There is ample evidence to me that there are few if any string savers left in the Navy. If so, they get a short trip out or are taken off their assignments or resign or something of the kind. At least in the Air Force as well as the Navy. We have been working for five years on this Committee to save money, hold back, constrain spending in one way or another, and hammering away with amendments on the floor and with everything we can do in hearings, and so forth, to call it to the attention of the military. Now we find with Admiral Zumwalt's memo that they are on the other side, they are doing their best to spend, spend, spend. You are sending teams out as you testified here this morning, to implement that memo and to make sure the funds are spent. You can see the terrific frustration we have here. We seem to be working completely at cross purposes and there is no question as to who is the most effective. Just take a look at our deficit of $38 billion. You are obviously winning this battle.

Do you have any reaction to that?

Admiral KIDD. Yes, sir. I would go back one step and underline the fact that the Congress appropriated the money in the first place which is being spent, appropriated it for purposes that we justify the need for in the case of the military, and here the Navy, for pieces of hardware that we must have, so I can see no cause for concern when we take steps to insure that we are able to buy that which we need and for which you gentlemen have appropriated the funds.

Chairman PROXMIRE. Well, I have no objection to that and I do not know how anybody else could possibly object that you be sure that you can buy what you need. The question is do you have to have at the very highest level this kind of express order to go even beyond the spending tendencies which have been demonstrated in such a superior way in the past? I am informed this decision on military spending has been made at the very highest level of our Government, for the Army and Air Force as well as for the Navy. Can you tell us whether similar efforts have been launched in the other services? Have you ever spoken to the Secretary of Navy on this matter?

Admiral KIDD. I could not speak for the other services.

Chairman PROXMIRE. Did you ever discuss it with Secretary Laird?

Admiral KIDD. No, sir, I have not.

Chairman PROXMIRE. Or with the White House, or anyone from the White House?

Admiral KIDD. No, sir.

Chairman PROXMIRE. Do you know whether the White House initiated the order to accelerate payment to defense contractors?

Admiral KIDD. No, sir.

Chairman PROXMIRE. All right.

Mr. Rule, have you seen any instructions to accelerate payments to defense contractors or to take steps to achieve fiscal year 1972 outlay targets?

Mr. RULE. I have seen that letter or wire or whatever it is you read. I have seen that.

Chairman PROXMIRE. Do you think that instructions of that kind have had anything to do with the recent actions on the Avondale claim?

Mr. RULE. No, sir, I do not think there is any connection at all.

Chairman PROXMIRE. Well, comment on that Avondale settlement. What was your reaction?

Mr. RULE. Maybe we ought to stick to that letter.

Chairman PROXMIRE. All right. Comment on the Zumwalt letter. It would be very helpful to have that.

Mr. RULE. Well, the Zumwalt letter, so-called, if that is what it is—as I recall it, it is a wire.

Chairman PROXMIRE. All right.

Mr. RULE. TWX.

I understand what they are trying to do and I certainly understand Admiral Kidd's explanation. We used to in the Navy have a policy when the Congress would give us our appropriations timely, we used to have a policy that we had to make sure that we spent one-fourth of that money in each quarter, that we could not slack off in our procurement, you see, down through the year. You remember this, Admiral Freeman.

We had to spend it prudently by quarter and not let it pile up at the end of the year.

This is not a new phenomenon, despite the fact that we now get our appropriations later. They always used to let it pile up and the directive to spend it by quarter was an effort to stop this. We used to always end up—Admiral Freeman knows this—with money at the end of the year and we would issue letter contracts pell-mell just to obligate this. This is nothing new.

Chairman PROXMIRE. Though it is not new, what do you think of it? You have been in the Navy now and had tremendous experience in handling these matters.

Mr. RULE. Well, the only thing really new is the itemization there, I think, of areas to look at.

Chairman PROXMIRE. In other words, they are doing it more efficiently now than before. They have got it organized.

Mr. RULE. I am not sure that is more efficient

Chairman PROXMIRE. They are wasting money more efficiently.

Mr. RULE. I am not sure it is wasting money but if Admiral Zumwalt had just sent a wire, now, look, do all you can to obligate money prudently by the end of the fiscal year, that would have been enough, but when you go into detail and say let us issue more unpriced purchase orders, the very thing we fight all year before this comes down not to do, when he says let us think about——

Chairman PROXMIRE. That is what concerns us.

Mr. RULE. Let us think about unlimited overtime when we just put out a directive to knock off overtime unless it is really authorized, some of these things are a little antithetic to our normal procurement practices.

Chairman PROXMIRE. Let me ask you now about the claims problem. First, I would like you to tell us why you tendered your resignation from the Contract Claims Control and Surveillance Group, whether you believe the group's action in rejecting the Avondale claim had anything to do with its abolition. Were you "pressured" to resign?

Mr. RULE. Oh, no, not at all.

Chairman PROXMIRE. Why did you resign?

Mr. RULE. The Avondale claim was rejected and I would like the record to show it was not rejected by Gordon Rule alone. It was rejected unanimously by the entire group, including the representative from the Office of General Counsel. It was rejected with the recommendation that the Contracting Officer's decision be made, not with the recommendation that we spend eight or ten months or another year trying to make the contractor's claim for him.

It was rejected on the 23rd of July. On the 4th of August I was called into a meeting with the then CNM, and Admiral Freeman, this was just a couple of weeks later, and told they were going to reorganize the claims group. The pitch was that they thought it would be best to have it headed by a lawyer. They were thinking in terms of a lawyer from the Office of General Counsel.

Well, I happen to be a lawyer but I was on notice at that time that they were going to reorganize and as Admiral Kidd said, this all took place before he came aboard.

I did not do anything at that time. I rocked along and on November 8, the Assistant Secretary sent a memorandum to the Chief of Naval Material saying he wanted a plan for a new organization to speed up the review.

It was at that time that I was sure that the change was going to be made and I am just not built in such a way that I am going to hang around until I get kicked out, so I resigned.

Chairman PROXMIRE. So it was obvious that you—as we used to say in the old days, when I was ten years old, first, I got hired, then I got fired, and then, by God, I quit. Does that describe it?

Mr. RULE. No. I do not get that analogy at all.

Chairman PROXMIRE. Well, do you feel—if you had——

Mr. RULE. That is another one of our patented analogies.

(Laughter).

Chairman PROXMIRE. Well, you have just told us that—you could see the handwriting on the wall. Maybe I misinterpreted what you said. Do you feel if you had not taken that action you would still be holding that position and you still would have the same authority over claims that you had before?

Mr. RULE. Oh, that is by no means sure because——

Chairman PROXMIRE. You can say that again.

Mr. RULE. There is the authority naturally to reorganize in any way that Chief of Naval Material wants. The only thing I am satisfied, and I have told Admiral Kidd this, the only point on which I am satisfied is if the Avondale claim had been approved instead of disapproved, nobody would ever have thought of reorganizing a damn thing.

Chairman PROXMIRE. Good. Well, that is the——

Mr. RULE. That is the way I feel.

Chairman PROXMIRE. That is fine. If you had approved Avondale wou would be in the same position you had been in. You would not have resigned.

Mr. RULE. I do not know. I am not saying how long I would have lasted but they would not have thought of reorganization at that point.

Chairman PROXMIRE. You heard Admiral

Kidd describe a new system for reviewing claims. Could you explain how the present procedure differs from the one it replaced?

Mr. RULE. There is not any reason why this new organization that has been set up will not be very effective. It will not be as effective as the group I headed because I headed the first team. They got the second team in now. But if they want to run it with the second team, that is all right. But they will do a good job.

Chairman PROXMIRE. You say the procedures are not changed then, that it is just a matter of the quality and experience of the personnel.

Mr. RULE. I do not think the procedures really make that much difference. It has been said that these people have very great procurement experience. They do have. But again, I go back to Admiral Rickover's memorandum and that is not the kind of experience that is necessarily good in settling claims.

Chairman PROXMIRE. By and large—I am sure there are many exceptions but by and large, is it not a fair observation that service people, that is, those who are in uniform, those who are in the service, are much more subject to discipline than those who are not?

Mr. RULE. Well——

Chairman PROXMIRE. Would that not make a difference in the makeup of these groups?

Mr. RULE. On that point I would like to say that this is one of the very refreshing things that Admiral Kidd as the new CNM has brought to this office. It is something that has been needed for a long time. I have talked to him and I know that he believes in accountability and discipline on the material side of this Navy. We have needed that for a long time and I am just delighted as hell that this refreshing individual comes along with these views because they happen to coincide with mine.

I feel a lot of kindred things about us. I think we both have the basic philosophy that I may be in error but I am never in doubt.

Chairman PROXMIRE. I can tell you that is an awfully good philosophy.

In 1969 the Navy seemed determined to do something about the claims problem, something other than simply paying the contractors for unsubstantiated claims. The Office of the General Counsel of the Navy was directly involved in claims reviews at that time. We have a memo from the then Acting General Counsel, Albert Stein, to the Vice Chief of Naval Operations, Admiral Clarey, stating:

"We intend to put the claims through a legal wringer to assist in squeezing the water out of any that are not solid."

Of course, your group was set up to help with the reviews.

Now, under the new system, the legal counsel is pretty far out of the picture and your group has been abolished, so the 2 major steps taken trying to bring the claims problem under control have been done away with.

Mr. RULE. No, sir, that is not correct.

Chairman PROXMIRE. Not a fair statement? Why not?

Mr. RULE. Because Mr. Stein was legal adviser to the CCCSG that I headed and occupies exactly the same position to the new group. No change. He was not a member of the group that I headed.

Chairman PROXMIRE. Was not there a man from legal counsel's office on your group?

Mr. RULE. Only Mr. Stein. He was not on the group, Senator. And the reason he was not on the group, the reason that the Office of General Counsel insists upon being advisors, is because they do not want the head of any group, my group or the new group, to be telling counsel as members what to do, you see. They have got to maintain this legal nicety. Advisors, not participants.

Chairman PROXMIRE. The trouble I have is that it seems to me that a contract is a contract. We should live up to the contract. You go over the contract only when there is overwhelming clear evidence that one party owes more. In other words, if a contractor's claim that the contract should be—more should be paid than was, then the burden ought to be clearly on him. He ought to be able to make a completely convincing case. The facts ought to be just irresistible, it would seem to me, or no payment should be made. That does not seem to have been what has happened in the past. It happened much more with you in charge. We fear that it is not going to happen in the future.

Shipbuilding claims seem to follow a definite pattern. The contractor incurs large cost overruns and submits voluminous claims to recoup his potential losses. The Navy gets bogged down for months or years trying to figure how much, if anything, it owe. It cannot figure this out to any reasonable degree because the contractor fails to keep records which would substantiate the claim. The shipbuilder makes an issue with Defense and Congressional officials about the delay and threatens to hold the ship hostage until the Navy pays the claim. The Navy eventually caves in, releases money through a provisional settlement or makes an overall settlement without ever getting to the bottom of the claim to see how much the Navy actually impacted the contractor. The first time a major claim is rejected by the Navy civilian review group, the group is abolished.

Admiral Kidd, how will your new Claims Board organization be able to handle these problems any better than they have been handled in the past?

Admiral KIDD. I make no promise they will, Mr. Chairman. All I can do is try.

Chairman PROXMIRE. How would you reply to my question?

Admiral KIDD. You have made a couple of points there that I think are deserving of a bit of clarification. Admiral Rickover's position has been cited. Mr. Rule has well articulated his views in relation to the importance of lawyers. I fully share both, fully share both.

As I understand and see the claims situation, there are two parts to it. Those parts which can be easily identified as responsible, where the Government is responsible, and for those portions I believe that we must pay our bills and should pay them promptly.

For those parts of the claims which are legal matters, then those are properly the responsibility of the law.

As far as where the lawyers are, sir, we have now lawyers, and have had for some time, at the contracting officers level in the Systems Command, at the claims team level. The team chief is a gentleman of the law. He has two hats. He works for the General Counsel of the Navy and he works for the Systems Command. So the law is well represented right from the outset.

Now, how are we going to insure that we do better? I make no promises in this regard. More people are obviously needed. These people are being hired, acquired, put on to the claims review problems as they come up.

Here we are at great disadvantage because, if I may continue for a moment, because we are seeing industry equip themselves with large numbers of gentlemen dedicated to the proposition of just addressing claims, trying to find ways in which claims can be developed.

Let me have that thing from Disneyland. I could not believe this yesterday. You might just be interested.

Here is a very nice brochure from Disneyland East, "Government Contract Claims April 17 to 21, 1972, Walt Disney World, Florida, a practical course in the techniques of presenting claims to the Government."

Chairman PROXMIRE. Disneyland.

Admiral KIDD. Now, you pay——

Chairman PROXMIRE. Will you submit that for the record?

(Laughter)

Admiral KIDD. In the back here, you pay $350 to take this course.

Chairman PROXMIRE. Does the Navy pay directly or indirectly for a seminar like that?

Admiral KIDD. Good heavens, no.

Chairman PROXMIRE. Will you check that out?

Admiral KIDD. I have. We asked if we could go, perhaps send a man free. We were told no.

Chairman PROXMIRE. Who conducts the seminar?

Admiral KIDD. This is George Washington University and Federal Publications, Incorporated, sponsoring. He volunteered——

Chairman PROXMIRE. I am sure we would find that the taxpayer is paying for it one way or another.

Admiral KIDD. Well, I do not know. We volunteered to send one of our gentlemen down to talk with them, give our side. No.

May I read for a moment—this is how the industry sees it, apparently, or at least the legal branch supporting the industry's views. "Claims volume has risen dramatically, for a number of reasons: contractors' desire (because of reduced work) to maximize returns from existing contracts; the coming-home-to-roost the problem generated by sophisticated procurements; the balanced realism that Government contracting is not a honeymoon."

This is on page 1 of why the attendees are there.

That gives you an insight into what we are up against on the Government side with a very modest group of lawyers having to face up to this type of quite formidable array apparently dedicated to the proposition of seeing how well they can do this job.

Chairman PROXMIRE. Well, will not the Navy require its contractors to keep proper books and records, to maintain adequate budget and cost control systems, and to segregate the cost of changes so that claims can be fully investigated and substantiated? It seems to me the claims are now being settled on the basis of subjective judgments, not objective facts.

Admiral KIDD. Too often.

Chairman PROXMIRE. The GAO has repeatedly advised us that contractors are not able to relate alleged cost increases to specific Government actions. Why will not the Navy act?

Admiral KIDD. We have been and are in the following ways. Increasing greatly the numbers of the gentlemen that we have in residence at the shipyards, at the factories of all types, not just shipyards, legal gentlemen in some isolated cases because we do not have too many lawyers, inspectors and examiners. In one large private contractor, some 400.

Now, you get to a point of diminishing returns here, I am sure. Where that point is I would not presume to say.

Chairman PROXMIRE. Let me interrupt. I think hiring more people, I am not sure that will do it. That is spending more money. What we are getting at is what you can do. Maybe it is difficult for you to do things. I am sure it is. But what you can do is to require the contractor to keep these records.

Admiral KIDD. And this we are doing now. There are several new directives. Mr. Packard, God bless him, he has several there in mind. This 7001 or 7002 is one instrument which is going to be a fine ballbat when everybody gets in line. It is not something that can be done overnight.

Chairman PROXMIRE. Well, I can think of one very effective way to act and that is just not to pay unsubstantiated claims. Do not pay them.

Admiral KIDD. I agree with you fully.

Chairman PROXMIRE. That is the incentive.

Admiral KIDD. Fully.

Chairman PROXMIRE. I am delighted to get that response. That is very helpful.

The Navy seems to be avoiding the Armed Services Board of Contracts Appeals and the litigation routes. How many claims has the Navy actually litigated and would you identify the cases and the amounts involved where the Navy has litigated claims?

Admiral KIDD. It will take about 30 seconds, if you want to go on to another question.

Chairmas PROXMIRE. The reason I stress this, maybe I am attributing to Mr. Rule improperly, but I thought he said something about how we should have less negotiation and more litigation, more going to court, more settling it on the basis of legal determination and not on the basis of negotiation where the other side has really nothing to negotiate.

Admiral KIDD. That is Mr. Rule's views Admiral Rickover's view and it is a view I, too, share. I think that we must go after these claims, identify the things that are proper charges on which there is no question, a change that the Government has initiated and for which we owe.

Where you get into some of these nebulous areas, the ripple effect, such things as that, I have told several contractors absolutely not. I am not going to get into that and if they choose to go that route, they must go to the courts.

Chairman PROXMIRE. Can you give us the data?

Admiral KIDD. Yes, sir. Would you like us to submit it for the record?

Chairman PROXMIRE. Unless you have it available right there.

Admiral KIDD. I have it right here.

Chairman PROXMIRE. Why do you not give it to us right now that is, the number that have been litigated?

Admiral FREEMAN. These are pending cases we have before the Armed Services Board of Contract Appeals at the present time.

Chairman PROXMIRE. Very good. Give us that for the record that is fine. You have several pages.

Admiral FREEMAN. Yes, sir.

Chairman PROXMIRE. All right.

Last year Admiral Sonenshein testified that the practice of making "provisional" payments on claims pending a final legal determination of entitlement and amount had been suspended and the inference I made was that it would not be resumed. A few weeks ago we learned that the Navy made yet another provisional payment to Avondale of $25 million. This is the claim that was unanimously rejected by the Rule group just a few months ago because it could not be substantiated.

I am informed that the provisional payments were made despite objections from the Navy's General Counsel and NAVSHIPS Deputy for Contracts. Is that right?

Admiral FREEMAN. Despite objection?

Chairman PROXMIRE. Yes, sir.

Admiral FREEMAN. No, sir. It was the other way around, Mr. Chairman. This——

Chairman PROXMIRE. Well, am I correct in saying that this was—this claim would have been unanimously rejected by the Rule group?

Admiral FREEMAN. Absolutely.

Chairman PROXMIRE. You reversed it.

Admiral FREEMAN. No. I did not reverse it. No. It was reversed by Mr. Rule and I have gone over the documentation wherein he reversed it and I think he was right.

Mr. RULE. Rejected.

Chairman PROXMIRE. I am also informed that payments were made without a report and evaluation by the claims team as to how much the Navy might owe on the claim. Is that correct?

Admiral KIDD. Run that by again, please, sir? No. no.

Chairman PROXMIRE. The rejection was made without a report and evaluation by the claims team as to how much the Navy might owe.

Admiral KIDD. We have had a claim team down there, Mr. Chairman, since last year.

Chairman PROXMIRE. Did they make a report on that?

Admiral KIDD. Last summer. They have been reporting continuously as they have identified parts thereof for which there was no question.

Chairman PROXMIRE. I am informed that Admiral Woodfin, the Deputy for Contracts, refused to sign the modification agreement for the provisional payment. Is that true?

Admiral KIDD. Well, I do not recall that. He was home with the flu.

Chairman PROXMIRE. If he did not sign it, who did sign it?

Admiral KIDD. What is it we are talking about now, sir?

Chairman PROXMIRE. The modification agreement for the provisional payment.

Admiral KIDD. That was signed by the Deputy Chief, Bureau of Ships.

Chairman PROXMIRE. Why did not Admiral Woodfin sign?

Admiral KIDD. As I say, I believe he was ill at the time.

Chairman PROXMIRE. He did not refuse to sign. Are you telling us that testimony to that effect——

Admiral KIDD. No. We sat right in my office and discussed this.

Chairman PROXMIRE. Did he recommend making the payment—Admiral Woodfin? You say he discussed it. Did he recommend making the payment?

Admiral KIDD. There was not disagreement among those at the time the matter was decided. I made the decision.

Chairman PROXMIRE. You say there was no disagreement. Did he recommend it? Did he take positive action and say you should pay this?

Admiral KIDD. No, I do not recall that he did.

Chairman PROXMIRE. Did you object?

Admiral KIDD. No.

Chairman PROXMIRE. Is the Legal Counsel here in the room?

Admiral KIDD. Sir?

Chairman PROXMIRE. The Navy Legal Counsel; is he here?

Mr. MANKIN. Yes, sir, I am the General Counsel.

Chairman PROXMIRE. Can you testify on this? Will you—did you know about this matter we have been discussing?

Mr. MANKIN. On the Avondale?

Chairman PROXMIRE. Admiral Woodfin.

Mr. MANKIN. And Admiral Woodfin. No, sir, I do not.

Chairman PROXMIRE. What about your own recommendations, sir? Will you identify yourself, come forward and identify yourself.

Mr. MANKIN. Senator, I am Hart Mankin, I am the General Counsel for the Department of Navy.

Chairman PROXMIRE. Yes, sir. Did you recommend this payment, sir?

Mr. MANKIN. Did I recommend the payment? I concurred in this payment, sir.

Chairman PROXMIRE. You did not recommend but you did not object to it. Is that a fair description, or you know about it but took no action?

Mr. MANKIN. I knew about it and I took the—the action I took is that I concurred in it.

Chairman PROXMIRE. Do you think it was a good decision?

Mr. MANKIN. Do I think it was a good decision?

Chairman PROXMIRE. Yes, sir.

Mr. MANKIN. I think it was a valid exercise of the judgment of Admiral Kidd and I think by and large, it was a good decision, yes, sir.

Chairman PROXMIRE. Let me ask you, Admiral Kidd, why did you decide to give Avondale the $25 million?

Admiral KIDD. Two reasons. First, I was satisfied that we owed them the money, but now let me stop right there. You know, this was not a lump sum payment. This money did not change hands all in a bunch. Not by a long shot. This was a provisional payment paid in increments, to be paid in increments.

Chairman PROXMIRE. Let me just interrupt to say did Mr. Rule make any recommendation on this matter?

Admiral KIDD. I do not recall.

Chairman PROXMIRE. Did you ask Mr. Rule?

Admiral KIDD. I did not, no.

Chairman PROXMIRE. Mr. Rule, did you have any position on this?

Mr. RULE. No, sir. I would like to say I was not consulted. Admiral Kidd——

Chairman PROXMIRE. Your original position was, of course, to reject it, right?

Mr. RULE. Admiral Kidd called me down one evening and was kind enough to fill me in on this payment. The decision had been made. I begged him not to make it. I thought it was a mistake and I begged him not to make it. I would beg him all over again because as I told him, I think really, and this will be my ongoing opinion, we are here to help this man and keep him from making mistakes. He can exercise the final judgment but I thought he was making a mistake and I so advised him.

Admiral KIDD. That is correct.

Chairman PROXMIRE. Fine. Thank you. Why did you think this was wrong, Mr. Rule?

Mr. RULE. Well, I understood and I still understand Admiral Kidd's desire to get the ships. He was trying to do everything he could to get the ships. But basically, as Mr. Packard stated in his speech with respect to holding the contractor in the case of the F–14 to the contract, I was in favor of holding the contractor in this case to the contract. Aside from holding the contractor to the contract, in that connection let me read one more line from Mr. Packard when he says: "Although some companies may be forced to suffer financially because of this concept", holding the contractor to the contract—"it will not be a major disaster to the country. It will be a very major disaster to the country if we cannot get the military-industrial complex to play the game straight. Until and unless we can stop this attitude, we are going to continue to waste the taxpayers' dollars, get less defense for the dollars we spend."

Chairman PROXMIRE. I thought very, very highly of Mr. Packard. He and I disagreed on some things but I thought he was a very great servant of our Government.

That entire speech will be printed at this point in the record. I think it is a very fine statement of principle that we ought to abide by.

Chairman PROXMIRE. Let me ask you a little further——

Mr. RULE. I would like to make one more point in answer to your question why I advised Admiral Kidd not to sign this provisional payment. Avondale is a division of the Ogden Corporation, a conglomerate with a lot of money. If they had simply said we are turning off the spigot, we are not going to finance Avondale any more, I think we should have gone after Ogden and made them put up the money rather than let them off the hook.

Chairman PROXMIRE. Thank you very much. That is most helpful.

Admiral KIDD. Would you like me to continue on that subject, Mr. Chairman?

Chairman PROXMIRE. All right. Maybe if I ask a couple of further questions you can include those in your response. I wonder if your decision was influenced by the instruc-

tion you received to accelerate payments to contractors from your superior.

Admiral KIDD. Absolutely not.

Chairman PROXMIRE. And also whether your decision was influenced by Avondale's threat to stop work?

Admiral KIDD. Oh, they had already stopped.

Chairman PROXMIRE. Threat not to continue, then, not to proceed.

Admiral KIDD. In answer to the first question——

Chairman PROXMIRE. Holding the ship hostage, not letting you have the ship.

Admiral KIDD. In answer to the first question, absolutely not.

Chariman PROXMIRE. That did not influence your decision.

Admiral KIDD. Admiral Zumwalt's memo?

Chairman PROXMIRE. No. You have answered that. I am talking about holding the ship hostage, whether or not that was an important element in your decision.

Admiral KIDD. It was, indeed.

Chairman PROXMIRE. It was. That was the crucial factor?

Admiral KIDD. Well, no. No. I will not say the—the crucial factor was the pressing need for those platforms. The fleet needed those.

Chairman PROXMIRE. That is what I mean.

Admiral KIDD. The fleet needs them badly. The team had been down there since last summer, going through, revalidating the figures which Mr. Rule had approved, and that team was reporting regularly their findings and I in checking with the team found what they had validated as proper charges to the United States for changes and for things that were our responsibility, and I decided that I would pay that bill. And the proper name for that bill I see here is a provisional price increase paid incrementally as they performed.

Avondale was very strong in their objection. They preferred to have what they called a maximum modification to the contract which I rejected out of hand. I said no, I would not stand still for that because implicit in that if I agreed to that would be that we owed them the money that Mr. Rule said we did not owe them and I said I do not think we owed you that much money.

Chairman PROXMIRE. Is it not true that the Navy had already provided 23½ million dollars to Avondale?

Admiral KIDD. That is exactly correct.

Chairman PROXMIRE. So this $25 million meant that you were paying about two-thirds of what the original claim was?

Admiral KIDD. Quite right. That is correct. And the first $23 million was made up of increments at that time of validated charges as the 25 provisional price increase was made up of elements of validated proper charges, too.

Chairman PROXMIRE. Does not the Navy when it makes this much of a payment give up its bargaining position? You will never get that back, will you?

Admiral KIDD. Well, I was advised on that score——

Chairman PROXMIRE. I am sure.

Admiral KIDD. I was advised on that score and I made a judgment. I could have been wrong. It would not be the first time I have made a wrong judgment, but I wanted those ships, having just come from a fleet where we needed them badly, and this was a validated bill that I was led to understand by the experts in whom I have proper confidence, that it was money owed by the United States and I decided to pay the bill.

Chairman PROXMIRE. Well, another way of looking at it is that this is extortion, that they were extorting funds from you on the grounds that otherwise you would not get your ship, you would not get what the Navy needed and you collapse and give in under this claim and it establishes a precedent which Mr. Packard and Mr. Rule are warning against here.

Admiral KIDD. I thought about that, too, very carefully, and extorting—perhaps. But their price asked, demanded, was ever so much higher, somewhere around 74, 76, somewhere around in there, $73 million, and I—

Admiral FREEMAN. $75 million.

Chairman PROXMIRE. This is 48½. This would be 48½ of that $75 million.

Admiral KIDD. Yes. And that difference has been the part in question right along.

The ripple effect, and so on, things that are rather nebulous, I do to get a handle on, and I said absolutely not, I will not touch it.

Chairman PROXMIRE. Now, on February 11th, Admiral Rickover sent a memo to Admiral Kidd strongly objecting to the new procedure for handling claims. Admiral Rickover said in his memo that claims settlement is principally a legal matter and should not be handled like contract negotiations. He suggests that the Office of Senior Counsel establish a Review Board composed of legal, accounting and technical experts to review settlements and eliminate items not clearly substantiated and, among other things, a list be promulgated of contractors who frequently make claims against the government or who submit excessive or unwarranted claims and that procurement agencies give consideration to contractors' claims records in awarding new contracts.

I would like to get your reaction and Mr. Rule's, reaction to Admiral Rickover's recommendations. Do you feel they are sound?

Admiral KIDD. Oh, I can answer that very simply. I agree with him. I seek his advice regularly. He calls me up many times a day with advice and I think he is sound.

Chairman PROXMIRE. What have you done to implement that recommendation? What have you done to have legal counsel set up?

Admiral KIDD. I think that the Board we have constituted now is going to operate, if I have my way, just about the way he proposes.

Chairman PROXMIRE. That is not under the General Counsel?

Admiral KIDD. No, it is not. However, the legal gentlemen whom we have as I mentioned earlier in the Systems Command and at the claims team level are gentlemen who have double allegiance, allegiance to the General Counsel and to the System Command for whom they work.

Now, when we go after a claim and agree to and pay our proper bills for things that are uncontestable, anything else that I am going to say take it to the Court, which is what Admiral Rickover has proposed.

Chairman PROXMIRE. At the present time the claims come up through the Systems Command?

Admiral KIDD. They do, sir.

Chairman PROXMIRE. They get to review them?

Admiral KIDD. Yes, sir, they do.

Chairman PROXMIRE. Isn't there a conflict of interest involved here?

Admiral KIDD. How so?

Chairman PROXMIRE. What I had in mind was at that point an independent group, either Counsel's office or Mr. Rule's office, wouldn't have advice, would they? They would step in maybe later but at that point the decisions would be made by the——

Admiral KIDD. No, no.

Chairman PROXMIRE. Procurement officials.

Admiral KIDD. I disagree with that, Mr. Chairman because the team, for instance, that I sent down to Avondale were gentlemen picked from rather far and wide. I would say no to the possibility of a conflict of interest there, sir.

Chairman PROXMIRE. Mr. Rule, yesterday we heard testimony from the Comptroller General about the settlement of Lockheed's claim two years ago. I suggested it appeared the claim was divided up into four portions in order to keep it from going to your Review Board. Seventeen million dollars should have gone to your Review Board since the total exceeded five million dollars, they divided it into five portions—all of which were under five million dollars, so you had no opportunity to see it and no right to under the law.

I also suggested the enormous discrepancies between the alleged delays and the actual delays indicated to me that the contractor may have intentionally misrepresented the facts in his claim.

I wonder if you could comment on the Lockheed claim and the GAO report.

Mr. RULE. Well, sir, as I mentioned earlier, the total claim involved nine contracts—

Chairman PROXMIRE. What is that? I am sorry. I missed it.

Mr. RULE. The total claim from Lockheed involved nine contracts. These five contracts were—they had a total claim value of about forty million dollars and Admiral Soneshein did feel that they were worth seventeen or eighteen million dollars. However, each one of those five contracts or rather none of those five contracts was he going to settle for at over five million dollars and we discussed this—Admiral Soneshein, Admiral Freeman, myself. We made it perfectly clear that if they were going to be negotiated as a lump sum all five together, they woud have to come to my Review group.

We were assured that they would not be negotiated that way, that they would be negotiated separately. I have no reason to believe that they weren't, although it is a little difficult negotiating techniques for me to comprehend, but I have no reason to believe that they were not negotiated separately, and in fact the GAO has checked that point. And they have no reason to believe that they were not negotiated separately, and hence, Admiral Soneshein lived up to his agreement and they did not and should not have had to come to my group.

Chairman PROXMIRE. Mr. Rule, I wonder if you would like to add anything as to how you think claims problems ought to be handled. What should the Navy, what should Congress do? Do you have any recommendations that you would like to make at this point?

Mr. RULE. You realize that you are asking an ex-claim person, but I have thought a lot about it.

Chairman PROXMIRE. One for whom I have the highest respect and faith.

Mr. RULE. I have thought a lot about claims for various reasons and I do have some recommendations. Bear in mind that my philosophy on claims against the government, unilateral claims, submitted by—we are talking ship builders now who come in years after—in some instances the ships have delivered—and say, you owe us fifty million dollars, one hundred million dollars, I just want to say that I characterize that as an adversary proceeding. I don't think that that is just another negotiation. I think that when a contractor comes in like that, unilaterally with five stacks of volumes prepared by so-called experts, I think that is an adversary procedure and I would treat it as such. And it is that feeling that makes me get to the point in my thinking where I say, these things should not be negotiated.

You negotiate new procurement. You do that because in every new procurement, when a contractor gives you his proposal, there is a big grey area of costs that he wants, and you only sort out those grey areas by sitting at the table and negotiating them and then you determine how much you should pay for what it is you want.

But when a claimant comes in unilaterally with millions of dollars that we are now told are settled for an average of 37 percent of the claim, my philosophy is that the grey area which cannot be substantiated, those

grey areas should be left for a board or a court to decide.

Now, there are people who don't feel that way obviously. The lawyers are not very prolitigation. Lawyers like to settle things. This is the one objection to—possible objection to Admiral Rickover's memorandum. I would be all in favor of turning them over to the lawyers if you had a hard-nosed staff of lawyers. If you had a bunch of pantywaists who wanted to settle everything and not go and slug it out at the ASBC and do the hard work, I wouldn't be in favor of that.

I would suggest that we get these claims, we scruf them, we sit down with the contractor and go over all the areas so that he cannot say we have been arbitrary or capricious. We would discuss every possible point in the claim with them and then make our judgment as to what the claim is worth and we have no negotiations. We tell the contractor, here is our evaluation. You can take this and settle right now. If you don't, we will make a CO decision, a Contracting Officer's decision right now for that amount and you can appeal.

Now, that is—if I had carte blanche I think that is the way I would do it.

There is an alternative that I would recommend, and that is that after the Navy has received the claim and after they have done all their fact-finding work, that both those packages be turned over to the GAO for decisions as to how much we owe this contractor. This would obviously negate any pro or con feeling on the part of the Systems of Navy Shippers personnel. Sometimes they feel anti a contractor and sometimes pro. This would get it into a purely objective forum and I am reminded that the GAO is going down and investigating these claims anyway after they have been settled, and I just would like to get them in with us to help settle them.

Now, I know they said yesterday that they don't want to do this because the contracting officer has to make the decision and they are not contracting officers. Well, that is at the tail and I think it could be taken care of in the case of claims, but I really think GAO could help us a great deal more.

Chairman PROXMIRE. We have asked the GAO to do this and they have indicated they couldn't.

Mr. RULE. Well, they did that on the ground that they stated yesterday that they are—that a contracting officer has to make a decision. Normally this is true, but I suggest, sir, that when an unusual situation, why can't we cut the cloth just a little differently to suit the situation?

Chairman PROXMIRE. Mr. Rule, those are excellent recommendations.

Mr. RULE. I haven't finished. I haven't gotten to the best part.

Chairman PROXMIRE. I beg your pardon.

Mr. RULE. I think, Senator, that Claims, I am not talking new procurement, I am talking claims—when this man comes in and files a claim against the government, I think that those claims should have the same stature, and dignity as a case in court. It is an adversary proceeding just like a case in court.

When a case in court is filed or when a case is before a board, members of Congress, lawyers, Secretaries, they don't call up the Judge and they don't lean on anybody and they don't call the Clerk of the Court, and I think that claims should have that—should have attached that same dignity and people should not be able to call up about claims. And this applies to lawyers, members of Congress, and everybody else.

I think there should be a canon of ethics in the Bar Association that should preclude lawyers from running to Congress, calling up the Secretaries, doing a lot of things that they wouldn't do for a case in court, you see. I think that they should do exactly the same things and only those things that they do with a case in court.

I think that there should be a rule in the House and in the Senate of the Congress along the same lines, that it is improper for members of Congress as they are doing today to call constantly, have meetings, call people up to the Hill, go down and sit with the Secretary, to talk about claims while claims are being adjudicated. I think they ought to—that ought to be an improper practice, and certainly to the extent that they call to expedite a claim which is perfectly natural, you like to point out how it is all right to expedite, and I agree.

Chairman PROXMIRE. We have been through that once.

Mr. RULE. Yes, we have been through that. But records ought to be made of any call placed by the lawyers, the members of Congress, on claims and they just don't have that stature today and I think they ought to have it.

I think that further, my last point is that when claim accounts, their lawyers, have meetings in the Bureau on the claims, I think those meetings ought to be recorded and a record kept of them for further use.

Those are my recommendations.

Chairman PROXMIRE. Those are very very valuable. I am glad you went ahead instead of stopping when I interrupted.

And I am glad that you sent up to me the Disney Land faculty showing contractors how they can get money out of the government. It includes on the faculty, as I suspected, officials of the Federal Government who are being paid by the taxpayers.

For example, Preparing and Defending the Claim, George T. Malley, Chief Counsel, NASA Langley Research Center.

Obtaining Information Discovery and Supoena, Irving Jaffe, Deputy Assistant Attorney General, Civil Division, Deputy Justice.

Clinic, Gerson B. Kramer, Claim, Department of Transportation contract appeals board.

Presenting Claim, to the Comptroller General, Paul A. Schnitzer, Assistant General Counsel, General Accounting Office.

Clinic, S. Neil Hosenball, Deputy General Counsel, NASA.

So that I don't see any—wait a minute, oh, yes. Government Claims Against Contractors, Harold Gold, Counsel, Navy Facilities Engineering Command. That is the first Navy personnel I have seen.

Department Suspension and Blacklisting, Paul G. Dambling, General Counsel, General Accounting Office.

And "Live" Hearing Demonstrations, Board Chairman, Richard C. Solibakke, Chairman, Armed Services Board of Contract Appeals.

So, this court is given to tell contractors how to get money out of the taxpayer, I think it is shocking. I am delighted that you called that to my attention. I missed that Disney Land faculty.

Mr. RULE. Senator. There isn't anything new about that except where it is going to be held. Those sections are being put on throughout the country regularly.

Chairman PROXMIRE. Yes, but my question earlier was whether this was being done by the Federal government or not? It is not being done directly. It is under the sponsorship I understand of George Washington University, I was told.

The important point I am trying to make is that members of the faculty here moonlighting are the people who are on the other side and employed by the federal government. I think it is a observation that is worth noting.

Admiral Kidd, I would like to get into ship building practice now. The GAO reviews of cost control and procurement practices at two of your major ship yards, Newport News and Litton, indicate that the Navy still doesn't have effective control over the cost of work for which the government shares a large part of all cost overruns and underruns. How much business do you estimate you have under contract that is not under effective cost control?

Admiral KIDD. Oh, I wouldn't hazard a guess, Mr. Chairman. I am not comfortable with the total adequacy of our cost controls. I am satisfied that the contractors are gradually becoming increasingly aware of the need for much improved cost controls. I am also satisfied that in the majority of cases they are banding quite satisfactorily and promising efforts in this regard.

But it is not going to be an easy thing to solve and it is going to take a long time.

Chairman PROXMIRE. Well, for the record, to the extent that you could do so, with your staff, will you review what has been done and indicate what actions you are taking to correct deficiencies?

Admiral KIDD. Yes, sir.

Chairman PROXMIRE. Both the Defense Contract Audit Agency and GAO have reported that during the periods 1969 to 1971 Navy contracts were charged about seven million dollars for overhead expenses applicable to Litton's commercial work carried on at the West Yard. We were shocked by this yesterday. Why hasn't the Navy acted and caused them to refund this money?

Admiral KIDD. Oh, we have, Mr. Chairman.

Chairman PROXMIRE. What else have you done?

Admiral KIDD. Yes, sir. This irregularity, if you will, causes as yet we can't prove one way or the other how or why it happened, was first identified by our own government contract auditors. It was brought to our attention. We went back to the contractor, drawing his attention to this, and asking him why and directing that he change his procedures to insure that this sort of thing would be prevented in the future.

He came back to us with a letter acknowledging this error and then enclosed a piece of paper, a legal brief, saying that he would change his bookkeeping procedures henceforth, but that the change in procedures would not be properly, legally made retroactive. We sent this compendium, this file, to the Defense Contract Audit Agency for comment and review. They are to come back to us on April 14th, of this year—and their staff. But I haven't given up on that one.

Chairman PROXMIRE. Well, I am glad to get this report. We missed it yesterday.

What is the present estimates for the program cost and the program unit cost of the LHA being built by Litton and how do these costs compare with the original estimates?

Let me ask some other questions in this connection as long as you are getting the data together. I want to know how much is Litton's claim on the LHA and I want it broken down, if possible, the figure by escalation, cancellation, and Navy impact costs.

Admiral KIDD. Those figures are not in our hands, Mr. Chairman, and aren't due until the end of this month. The re-set time.

Chairman PROXMIRE. How about the LHA delivery schedule? I understand there has been a slippage of two years, 24 months.

Admiral KIDD. The LHA delivery schedule has slipped, Mr. Chairman. Let me see where that stands right now.

Chairman PROXMIRE. Will you give us those other figures when they come in?

Admiral KIDD. Yes, sir.

Chairman PROXMIRE. I know you don't have them now. But send them to us.

What is the reason for the slippage which has occurred on the LHA program?

Admiral KIDD. Well, sir, a combination of many things. From the contractor's point of view they had a hurricane down there which slowed them down. They had a strike of about a month's duration. But when the storm struck, they left town. They didn't come back. So it wasn't a question——

Chairman PROXMIRE. Now, did you agree it was a 24 month slippage? Is that accurate or not?

Admiral KIDD. On the LHA?

Chairman PROXMIRE. Yes.

Admiral KIDD. No. I think that is kind of a soft figure yet.

Chairman PROXMIRE. It is more than 24 months?

Admiral KIDD. No. I would say somewhere between 12 and 24 but it is a little bit early to tell just how much.

Chairman PROXMIRE. I see.

Admiral KIDD. Those are the two things.

Chairman PROXMIRE. It could go higher, I presume?

Admiral KIDD. Yes, it could, I suppose.

Chairman PROXMIRE. How much will the delivery delays impact on other Navy programs such as the DD 963?

Admiral KIDD. I hope none but I am from Missouri in this regard and here again the contractor is not far enough along in what he is doing on the 963 to be able to tell you with any degree of assurance just what his delay is if any are going to be.

Chairman PROXMIRE. I am told that the overrun on the LHA is four hundred million dollars on the five-ship original target costs. Can you confirm or deny that?

Admiral KIDD. No. I think that that—I think that sounds like a figure picked out of the air.

Chairman PROXMIRE. Well, so far we have been—you know, when we make these estimates of overruns, they tell us that we are too high and we are always either on the nose—we were on the C–5–A—or too low.

Admiral KIDD. I didn't say it is too high or too low or anything else.

Chairman PROXMIRE. I know. You didn't deny it.

Admiral KIDD. We don't have the figures in hand, sir, from the contractor yet.

Chairman PROXMIRE. Well, when will you have these?

Admiral KIDD. They are due at the end of this month, Mr. Chairman.

Chairman PROXMIRE. Only a few days from now.

Admiral KIDD. Correct. What his cost dollars are going to be, and in that would be included the dollars for the cancellation which is in the contract, when we went from nine down to five, and additional changes of costs.

Chairman PROXMIRE. Can we count on having that by the end of next week?

Admiral KIDD. If he is on time, sir.

Chairman PROXMIRE. All right. It is my understanding that Litton is proposing that the Navy pay at the same ceiling price for five LHA's as was originally granted for nine LHA's and then in return Litton would accept "low profit of about 8 percent on costs", which would be an enormous profit, of course, on invested capital, and would drop its present claim. Can you confirm or deny this?

Admiral KIDD. I have heard that which you just enunciated but very informally and something on which I have taken no action because it is just about fourth-hand conversation.

Chairman PROXMIRE. I am also informed that partly because of the difficulties Litton has experienced at its new yard on the East Bank it is proposing to build the first 7 DD 963's at the East Bank, it increased costs to be borne by the Government.

Do you have estimates as to how much it would cost to build the DD 963's at the East Bank.

Chairman PROXMIRE. The Navy has had no estimate as to how much that would cost?

Admiral KIDD. No. We have no such communication from the contractor yet, sir.

Chairman PROXMIRE. If some of the DD 963's are built at the West Bank and some at the East Bank, wouldn't this cause the government to pay twice forward start-up costs and wasn't this what was supposed to be avoided by giving the entire program to Litton and not giving part of it to the Bath Shipyards in Maine? Wasn't this part of the justification for concentrating the whole program at the new Litton yard? How do you avoid the concentration, if you can?

Admiral KIDD. Good heavens, if that proposal that you have just indicated is apparently about to hit us comes to pass, that would obviate the—that West Bank yard.

Chairman PROXMIRE. That is our point, gentleman.

Admiral KIDD. It seems to me.

Chairman PROXMIRE. Will you let us know if they make that proposal and what the terms are?

Admiral KIDD. Indeed.

Chairman PROXMIRE. Has Litton asked the Navy formally or informally to restructure either or both the LHA and the DD 963 contracts.

Admiral KIDD. Restructure? No, sir, not to my knowledge.

Chairman PROXMIRE. Does the Navy plan to restructure either contract?

Admiral KIDD. No, sir, not to my knowledge.

May I make addition here, Mr. Chairman.

Chairman PROXMIRE. Yes.

Admiral KIDD. Mr. Rule mentioned earlier, and you fudged a little bit on that F–14 contract, this is the same type contract, you know, and in counterpoint to Mr. Rule's observations on holding the contractors feet to the fire, that type of contract is no longer allowed, which I am sure is well known to you, but I think it would be important to introduce it into the record at this time.

Chairman PROXMIRE. Good. I have so many difficulties with the F–14. I know it is dear to the hearts of some of the people in the Navy but, boy, it is a tough one for me to justify in terms of admissions in view of the fantastic per copy cost of, what is it, sixteen million dollars now compared to the planes it would replace of about three million dollars and the notion that it would enable the aircraft carrier to be able to stand up to—help it stand up to Russian land planes, and so on. It just seems to me to be something impossibly costly and we have to cut our number of planes that we possibly afford to have.

Has Litton—let me ask this. Isn't it true that the Navy work at Litton's new ship yard so far is suffering from the same problems the Maritime Administration reported for its program, that is, defective structures, cost overruns, schedule delays, and a lack of trained manpower?

Admiral KIDD. Was that first defective structures, sir?

Chairman PROXMIRE. Yes.

Admiral KIDD. No, sir. Not yet as far as——

Chairman PROXMIRE. Let's take these one by one. Cost overruns?

Admiral KIDD. That again is going to be piece of this re-set submissions from the contractor due at the end of this month.

Chairman PROXMIRE. Schedule delays?

Admiral KIDD. The same, yes, sir.

Chairman PROXMIRE. Lack of trained manpower?

Admiral KIDD. This I can confirm, yes, sir.

Chairman PROXMIRE. Let me go back to the cost overruns. What was your response on that?

Admiral KIDD. This would be again a part of this dollar package that is due at the end of this month. As far as what I can prove to you at this point in time, I am——

Chairman PROXMIRE. We were asking for the——

Admiral KIDD. I am uneasy.

Chairman PROXMIRE. ——Asking for the figures, on the original cost and present projected cost. You don't have those?

Admiral KIDD. No. Not in writing.

Chairman PROXMIRE. What can—can you give us what you have, if not in writing, verbally?

Admiral KIDD. No, because you ask five different people, Mr. Chairman, you get five different answers.

Chairman PROXMIRE. They are all estimated overruns but in different amounts.

Admiral KIDD. But they are high, sir, on the high side.

Chairman PROXMIRE. How about the Navy's estimates? Does the Navy have one of its own or have more than one?

Admiral KIDD. We are tracking what they are telling us and we are tracking what our estimates are.

Chairman PROXMIRE. What does your track show?

Admiral KIDD. As you can well imagine, and I summarized that just a moment ago when I said I am uneasy.

Chairman PROXMIRE. What are the figures?

Admiral KIDD. I don't have those right at my finger tips, Mr. Chairman.

Chairman PROXMIRE. You can get that for the record, I understand.

Admiral KIDD. All right.

Chairman PROXMIRE. Isn't it also true that the anticipated benefits from the new yard have so far not been realized by the Navy?

Admiral KIDD. Here again it is still too early to tell because they are not at an identified milestone yet which they haven't met.

Chairman PROXMIRE. You gave them an LHA contract in '69. When will you be able to get them? That is three years ago.

Admiral KIDD. Yes. The first one, Memo of Agreement, original 1973, Memo of Agreement, 4/1/74. Nineteen months in one case.

Chairman PROXMIRE. Nineteen months in connection with what, sir.

Admiral KIDD. Delay in delivery on the first one.

Chairman PROXMIRE. Will you submit that document for the record? Can that be available to us?

Admiral KIDD. I would be happy to give you a summary of what the schedule shows, Mr. Chairman.

Chairman PROXMIRE. All right.

I just have one other area, Admiral. You have been most patient and responsive and I am very grateful to you, it wouldn't take us long, I think.

I want to get into the profits on Polaris Poseidon overhead and conversion. I am sure you are familiar with the correspondence between Admiral Rickover, Admiral Sonenshein and myself concerning the issue of excess profits made by the Electric Boat Division of General Dynamics?

Admiral KIDD. Yes, sir.

Chairman PROXMIRE. On Polaris Poseidon overhaul and conversion program, some time ago Admiral Rickover testified that a shipyard for the same work. Admiral Sonenshein later identified the yards as Electric Boat and Newport News Shipbuilding and Drydock Company, a subsidiary of the Tenneco conglomerate firm. I asked Admiral Sonenshein about Admiral Rickover's charges and Admiral Sonenshein replied in a letter that the last time they had this problem was in 1970 and since then profits and costs were coming down.

I asked Admiral Rickover to give me his reply to this letter and he told me in a lengthy and detailed response that there was no significant change in costs or profits on the submarine contracts involved with the exception of one where Admiral Rickover personally negotiated a lower profit with Electric Boat. Now, in the first place, credibility gap between the two of us. Why shouldn't members of congress be able to obtain the unvarnished truth about defense contracts without digging for it like a coal miner?

Second, do you intend to continue paying Electric Boat were profit than Newport News for comparable work? As you know Electric Boat company's costs are higher than Newport News' on essentially the same work. This fact is beyond dispute, and so far I have seen nothing to indicate that the Navy is doing anything about it. In fact, I believe the

situation is getting worse. Why won't the Navy act?

Admiral KIDD. Well, I would hope your last observation is inaccurate, there we are not doing anything about it. I think we are. I cited earlier the additional number of inspectors, examiners, that we have gotten on scene at both sites. We have made changes there.

Chairman PROXMIRE. Once again, when you cited that I pointed out this is more people, more expenses to the government, more expenditures but doesn't necessarily mean that you are going to reduce anything——

Admiral KIDD. No, sir.

Chairman PROXMIRE. In their explicite instructions of a particular kind that are going to be put into effect.

Admiral KIDD. Quite right.

Chairman PROXMIRE. What are they?

Admiral KIDD. Those instructions are to insure an improved and more accurate audit track of material, manpower, labors, costs, direct, indirect, and overhead.

Now, we are going to continue to also have cost disparities based upon geographic locations which is a case in point here where the wage rate at one site are higher than the wage rates at the others. There are going to continue to be instances of greater inefficiencies which we are seeing here. No question about it. I called Admiral Rickover and thanked him for his intercessions in the instance which he cited in his letter to you. The statement I have been personally in discussions, visited, and talked to the top management of these activities.

Now, one point that has been made to me, and I will be a parrot and report it back to you. We haven't had up until about the last two years a direct comparison of work at the two sites where the work packages have been actually identical and thereby lending themselves to precise comparison. This is, nevertheless, sort of a one-time yard stick but it is a yard stick but it is a yard stick that makes your point.

Chairman PROXMIRE. Well, I appreciate this very much. It is good to get this confirmation. Admiral Sonenshein denied the problem, and, of course, contradicted Admiral Rickover. It is good to get your confirmation.

I understand the contracts for this work are cost plus incentive fee.

Admiral KIDD. Correct.

Chairman PROXMIRE. Under such contractor's reimbursement all of his costs plus a profit—my information shows that in nearly every case, where more than ten contracts are involved, the contractor got higher profits then were initially negotiated for the job. Is that correct?

Admiral KIDD. I don't know, Mr. Chairman.

Chairman PROXMIRE. In nearly every case where more than ten contracts were involved?

Admiral KIDD. If I may, I would be greatful to be able to provide that for the record.

Chairman PROXMIRE. Fine. I am also informed that the initial targets were overstated for both ship builders to make excessive profits. In one case the profit amounts to 18 percent on costs which of course could be over one hundred percent on invested capital. Can you verify that? Can you verify whether it was 18 percent on costs in one case.

Admiral KIDD. We are studying that now. We have two study efforts underway to address that matter, Mr. Chairman. It is not completely done yet, sir.

Chairman PROXMIRE. Why does the Navy pay such high prices and high profits on cost plus contracts?

Admiral KIDD. May Admiral Freeman address that, Mr. Chairman?

Chairman PROXMIRE. Yes, sir, Admiral. Go right ahead.

Admiral FREEMAN. I don't think the statement is basically a true one, that we pay high costs and high profit. It certainly is not the intent.

Chairman PROXMIRE. In this record we are making here, that seems to be true.

Admiral FREEMAN. In an incentive fee contract, the original negotiated profit will increase if he does in fact reduce his costs. That is one of the provisions of that type of a document in this particular case, as you have been a strong supporter of uninformal accounting standards, so this deals with that kind of a problem in trying to be able to relate exact work packages, exact costs comparison.

Chairman PROXMIRE. But in this case they seem to be increasing their costs. Doesn't that mean that the profit will be reduced?

Admiral KIDD. Well, the most recent one was a substantial reduction in profit negotiated by the Naval Ships Systems Command for the most recent overhaul.

Chairman PROXMIRE. That is the one Rickover negotiated.

Admiral FREEMAN. I understand he was a participant, yes, sir.

Chairman PROXMIRE. Admiral Kidd, you said something about a study that you are making. Will you make that available to us when you have completed it?

Admiral KIDD. When it is completed.

Chairman PROXMIRE. Can you tell us what the profits on these conversions and overhaul contracts represent as return on investment? Is there any evidence on that?

Admiral KIDD. No. And I have talked to the president of one of the two ship builders involved and here it is kind of fuzzy, Mr. Chairman, as to what the investment is.

Chairman PROXMIRE. I know it is a difficult concept. We have had difficulty with the GAO on it. I have argued and my staff has argued that the return on the investment is really much more significant. My own business experience and business training tells me that this is what a businessman looks for, whether the costs are high. Whether the profit on costs are high or low is fairly relevant. They will take a very low profit on costs if his return on his capital is high. Return on capital is the vital determining factor and determines the justification, too, of the price being paid.

Admiral KIDD. The thing that I find troublesome is the great difficulty in identifying from the contractor's point of view what is his capital investment. It could be dollars, it could be money spent in new equipment, new machinery, new training techniques.

Chairman PROXMIRE. I realize that. But I think almost any estimate, we get the contractor in a discussion and the dialogue, having him give his estimates, the Navy gives its, and then well, at least, have some basis for determining what kind of return they are getting—

Admiral KIDD. Those two contractors strongly objected, of course, to using the return on capital.

Chairman PROXMIRE. They also do because it shows, of course, that they are doing very well.

The study by the GAO overall showed the average return was 50 percent, 50 percent on invested capital. I am informed that last year's Electric Boat Division made twenty-eight million dollars on a little over fifty-two million dollars in investment and here is another example. You confirm that? If it is true, that is more than 50 percent profit. Can you determine that?

Admiral KIDD. Following your lead of some moments back, Mr. Rule just reminded me here, we have five actions for the selected application of this approach. Magnavox Texas Instrument, Itek and Hughes and Librascope, and we are attempting to have Navships and Navelectric to participate but that thus far has been unsuccessful.

Chairman PROXMIRE. How about the Electric Boat Profit of 50 percent, twenty-eight million dollars return on fifty-two million dollars in investment?

Admiral KIDD. I can't confirm or refute the fifty-two million dollar investment figure, Mr. Chairman.

Chairman PROXMIRE. Could Admiral Freeman?

Admiral FREEMAN. No, sir. I am not familiar with that specific contract, sir. I will be glad to provide a comment for the record.

Chairman PROXMIRE. If you will provide that for the record, fine.

I am also informed that General Dynamics Company-wide profits for the year were about twenty-four million dollars, less than the profits made by its Electric Boat Division. That means except for the Electric Boat the Company actually lost money. Wouldn't that seem to follow?

Admiral KIDD. It would.

Chairman PROXMIRE. Why is the Navy allowing such high profits? Again, do you intend to do anything to remove excessive profits?

Admiral KIDD. We are trying. I think the matter of allowing profits—in the short time I have been here, I have asked just about every contractor I have seen, how much is enough? What is a proper profit? And fascinatingly I get answers ranging anywhere from two and a half percent to fifteen and twenty. There seems to be no uniformity, and this I don't understand.

Chairman PROXMIRE. Well, if they are talking about return on invested capital, I think fifteen or twenty would be quite modest. I would be delighted if they would settle on the average of fifteen or twenty percent. But they don't in so many cases.

Admiral KIDD. On the other hand, I had a very prominent contractor in the office yesterday who told me that in his operation, if he could make a profit but a fraction above that which he would get if deposited in the bank, he figured he was doing pretty well.

Chairman PROXMIRE. Well, they are getting 50 percent at Electric Boat. That is a lot better than you can do in any bank savings account.

In the Polaris Poseidon overhaul and conversion situation I described earlier it appears that the Navy has spent sixty-five million dollars more at Electric Boat than at Newport News for the same amount of work. Why don't you find out the individuals responsible and hold them accountable?

Admiral KIDD. We are trying and I think those figures are a bit off because the work packages are not identical and this leads to a great difficulty in precisely scoping the problem.

Chairman PROXMIRE. Will you give us a final report on that?

Admiral KIDD. Yes, sir.

Chairman PROXMIRE. At this point I want to insert it in the record.

Admiral KIDD. In that regard EB just reorganized and replaced certain key people who had been apparently involved in weak material controls, but have no great answer yet.

Chairman PROXMIRE. All right, Admiral, once again, and Mr. Rule, it has been a most informative and useful hearing. You have made a fine record. I know there has been some controversy but that is one of the things you have to expect in a record that is worth anything. Thank you very, very much.

Tomorrow morning the committee will reconvene in the same room at the same time. We will hear the Honorable Charles L. Ill II, Assistant Secretary Navy Installations, and from Mr. Hervert J. Frank, President of Aerosonic Corporation will be introduced by Senator Chiles.

The subcommittee stands in recess. It will reconvene at 10 o'clock tomorrow morning.

(Whereupon at 12:25 the subcommittee recessed to reconvene tomorrow morning at 10 o'clock, March 29, 1972.)

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

WAR POWERS ACT

The ACTING PRESIDENT pro tempore (Mr. ROBERT C. BYRD). Under the previous order the Chair lays before the Senate the unfinished business (S. 2956), the title of which the clerk will state.

The assistant 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.

The ACTING PRESIDENT pro tempore. Under the order previously entered, the Senator from Mississippi (Mr. STENNIS) will be recognized for as much time as he desires.

Mr. STENNIS. Mr. President, I certainly thank the Presiding Officer, and I thank the Presiding Officer for the arrangement whereby I could use more than 15 minutes, although I do not expect to speak at great length on this subject; not today, anyway.

Mr. President, as would any Member of the Senate, I welcome the chance to take some part at least in the debate on this very grave question. I have welcomed the chance to take some part in the form and wording of this measure, although I do not claim more than a small part of the credit.

I want to say a few words by way of introduction that are not personal and are not intended as such, but it does have something to do with my personal experience.

I speak as one who does not want to restrict the President of the United States. There is very broad language in this measure that recognizes his powers as granted and conferred in the Constitution, as well as his responsibilities; and I speak as one who has a voting record and an advocacy record here over the years as leaning toward the Executive power in connection with the conduct of wars and the handling of emergencies.

I know the Nation has to have a head and when the people choose that executive head he represents in that office all the people. As a Member of this body I try when I can to back that leadership. I lean that way. That is my theory of government.

I do not want anyone in the President's office to sit idly by with indecision, or timidity, or anything else and fail to act in an emergency, fail to move in on a problem and let our country be a victim of aggression in war or in any other matters. So I lean against all those things and I think this measure surely takes care of the situation in that field.

As one who has been here when we went into two wars after World War II, neither of which was declared by Congress, and in neither of which Congress took a direct and positive yes or no responsibility I merely want to put Congress back in the role of having to share in that decision. That is all; that is all. I want to put Congress back into the role of having to share in decisions as to whether or not our Nation will be committed to war. I believe it should be fairly easy for the executive branch and Congress to find a way where both could fulfill their responsibilities—it is not a question of power—where both could fulfill their respective responsibilities as laid down in the Constitution of the United States.

During our history, until the years since World War II, we have been able, without any further legislation, to play those roles. I was standing right here behind where I am standing now, Mr. President, when the news came, in 1950, that we had committed troops to Korea, and the news about our landing troops there. I remember it as if it happened a few minutes ago.

I realized that that was the first time we had ever willfully gone into full-scale war, so to speak, without a declaration of war by the Congress. I was a new Member, but I listened closely.

At that time, on this floor, the thought of having to wait for Congress to declare war was almost scoffed at. It was said there was not time in a nuclear age, and so forth, and so forth. But I never did change my mind about it. I did not agree that we could not fulfill that obligation under the Constitution. As a practical matter, I knew, whether Congress had considered it or not, we would be calling on the young men of this country to fight that war, and I felt that the people as a whole were entitled to the viewpoint and judgment and decision, not only of the President, no matter who he was or how wise he was or how patriotic he was, but were entitled to the judgment and responsibility of the elected Members of Congress. That is where the direct contact with the people is. That is where the direct responsibility is. That is where the broad, common sense judgment of the American people as a whole is reflected—in the Halls of Congress—not always wisely, but it is the best they have in our system in those fields.

I think now, regardless of world conditions, that we ought not to abandon this safeguard and ought to put something on the law books—I am not so much interested in just what the language is—to reincarnate, reenact, and rerecognize the responsibility of the Congress in this field.

As I have said, I do not detract one bit from the President's power or his responsibility. This is a mutual affair. I said in a former speech that I did not believe any one man was wise enough to make these decisions and that the responsibility of it is too awesome for any one mind.

In addition to these leanings, I lean toward military preparedness—everybody knows that—in both quality manpower and in military weapons; but this leaning toward Executive power in crisis, and all, and leaning on military preparedness with a margin to spare, does not mean I have to abandon commonsense and throw away this safeguard—and I think it is a safeguard—against getting into wars. And that is exactly what we have done in the last 22 years.

Whoever has had the responsibility as the President has not had the backing of the Congress, which felt it had a direct responsibility, because it had not voted on a resolution. I think the military is better off, the people back home that have to carry the burden of the war are better off, and the Executive is far better off to have a required vote by the Congress. Then, if it is in the affirmative, the President has the backing of that Congress, and Congress feels a responsibility because it has put itself on the line and has committed the people. And the people feel they have been committed through their representatives—or at least a majority of the Senators and the Members of the House of Representatives—by having voted for that declaration of war, to throw the resources of this country, materiel and men, into the balance and commit themselves against the adversary.

On the other hand, if the people do not have that expression from the Congress, we know now that they do not feel the same way as they would with it. We know now by experience that they do not feel as much that it is their war and that they have this responsibility.

I hope we have learned a lot. I am not trying to refight this war, and I would not put my name on this resolution or any resolution until it expressly provided that the war in Vietnam is excepted from the operation of it. Because if we are going to set a policy for the future, let it be for the future and let us not try to lay blame for what happened in this war. I do not blame anybody except myself. I blame myself for my part, and let it rest there, and I have no comment on anyone else. But let us not get off now and try to let this debate decide whom to blame for it. I refer to the war only as an illustration of what can happen with reference to the people not having the benefit of the safeguard and then not feeling bound as they otherwise would.

I know what it is to be here—and I make no reference to anyone—as a Member of the Congress, not having had the responsibility of voting yes or no about whether we take this step.

The country is better off—I repeat that—the military is better off, the Congress, and every other branch of Government is better off if we do it this way. That is aside from the fact that it is a plain mandate of the Constitution of the United States. I think that is enough argument right there, but some persons do not think so.

I want to mention another thing, with great deference to anyone who may disagree. I do not think, Mr. President, that this is primarily a legal question. I think it is a policy question or a political question, and I use the term "political" in the very highest sense. If this were merely a legal question, we might as well just stop now, because the library is full of books, articles, periodicals, law books, Supreme Court decisions that try to pass on this matter with all the variations that are inherent in a fine technical instrument. We have all these fine variations on the legal aspects of this matter.

I think we can find constitutional authorities that would differ greatly, authorities that might be entitled to our respect on purely constitutional questions; but that is not what we are confronted with.

The cases in the Supreme Court of the United States were decided at an altogether different time, under altogether different conditions, and they really hang on a very slender thread so far as the present is concerned. This is a down-to-earth, practical question of whether or not we are going to be committed to war, which means all of our material resources and manpower, drafted or volunteer, are thrown into the breach, with the question of human survival for them and for the Nation in the balance. It is not a legal question. We are not going to find answers in the books, so to speak, on this matter.

It is a practical question we have got to decide for ourselves. There was a good deal of debate in the Constitutional Convention about this matter, a great deal of discussion, which was not recorded in full. But finally, in the last analysis, the Convention decided how to settle it, and expressed their agreement in a very few words, when they said, "Congress shall have the power to declare war"; and that part of the Constitution was adopted almost without debate.

As I say, I do not wish to seem personal, but I want to try to answer the question: "What are your credentials to speak on this subject, especially the practical side of it? What are your credentials in connection with all these treaties, these mutual defense pacts and agreements?" A very valuable Member of this body met me in the hall yesterday and warned me against this resolution. He said it abrogated all the mutual defense treaties we had agreed to.

I think not. I would not agree to a resolution that abrogated everything we had agreed to. But I refer now, for background, to the CONGRESSIONAL RECORD of January 26, 1954, page 785. There was then pending before us the Mutual Defense Treaty or agreement between the United States and Korea. The language of that treaty referred to the fact that the signatories, the parties signing it, would respond in case of danger. The late Senator Wiley of Wisconsin was chairman of the Committee on Foreign Relations, which was reporting this treaty.

A colloquy about the subject begins on page 785, as I have already stated, and continues for 3 or 4 pages, a part of which was between the Senator from Wisconsin and the Senator from Mississippi. If Senators will indulge me, I shall quote some of the questions that I raised then, and some of the answers.

On page 785, we find this:

Mr. STENNIS. Specifically the clause we are discussing means that before the United States can resort to force or use troops, before it can go to war, it will be necessary that the matter be brought before the Congress. Is that correct?

We are talking about the phrase "constitutional processes."

The colloquy continues:

Mr. WILEY. I think the constitutional process in the case referred to by the Senator from Mississippi would call for a declaration of war by the Congress. I am not so naive as to say, however, that something might not happen which would be in the nature of an attack upon our forces or upon a part of our territory. In such a case we would not wait for a declaration of war; we would go into battle. Constitutional process might also include, withdrawing our ambassador, by the President, issuing an Executive warning, cutting off aid, and so forth.

Mr. STENNIS. If the Senator will yield further, regardless of what particular circumstances might exist at the time the question may arise, are we committing ourselves now, in agreeing to this treaty, to go to war if Korea is attacked, without any declaration by the Congress?

Mr. WILEY. In my opinion, very definitely the answer is no, but we enter into an undertaking that if there is an overt act by an aggressor upon our ally, then we will do that which we think is advisable and in accordance with our constitutional processes.

Mr. STENNIS. Who is "we"? Is that the Congress, or is it the President?

Mr. WILEY. It is the Congress and the President, who have to determine that question.

Here is what I think is the pertinent point in all of that discussion: How far are we committing ourselves with this agreement with Korea to go to war without a congressional declaration? I asked who did "we" mean, and Senator Wiley said:

It is the Congress and the President who have to determine that question.

The colloquy continues:

Mr. STENNIS. Under that interpretation, then, an act of Congress would be required before American forces could be used, or the United States could go to war under the treaty, as the Senator has explained it. Is that correct?

Mr. WILEY. As I understand the question, I agree that if an overt act is committed by an aggressor upon an ally, it then rests with the constituted authority, to wit, the Congress, to decide whether or not we shall regard such aggression as a basis for going to war.

Now skipping a few questions, I asked this question:

Mr. STENNIS. Will the Senator say that, in his opinion, that was the opinion of the committee which has reported the treaty, and which he represents on the floor today, the Committee on Foreign Relations?

Mr. WILEY. Supplementing what I have said, I would state that of course the President, as Commander-in-Chief, would undoubtedly come to the Congress, he would undoubtedly submit to the Congress a statement of the facts, and Congress would make the decision as to whether it would make a declaration of war.

Nothing could be any plainer than that. And that was the issue, the main issue before the Senate: the matter of confirming and ratifying a treaty.

On page 787 of the RECORD of the same date, we have the following. This is a little repetitious, but it came up in different ways, and other Senators asked questions along the same line.

As shown on page 787, I asked this question:

Mr. STENNIS. The Senator says "the President and the Congress." He means, does he not, that the language would require affirmative action by Congress before the United States could enter into armed conflict or into a war?

Mr. WILEY. I think it means before we could get into a full-scale war; I am sure of that.

But I agree fully with the statement of the distinguished Senator from Mississippi, namely, that, regardless of wherever our troops may be, if they are attacked, they will not await action by the President in calling Congress into session; or if an attack were made on any of our territory, the President would be obligated, as Commander in Chief, immediately to take the steps which would be advisable under the circumstances.

Mr. President, this resolution follows that language right on the nose. The one is drawn to fit the other. The resolution is drawn to fit this language.

As shown on the same page, we had this further exchange:

Mr. WILEY. The Senator from Mississippi now speaks, does he, about the use of force?

Mr. STENNIS. Yes; the use of force.

Mr. WILEY. Very well. I think that if the circumstances were such as I have suggested, namely, if there had been an overt act of aggression, but our troops were not involved, or if there had not been an attack upon our own troops, but simply an attack upon the troops of our allies, it would necessarily follow, under article III, that we would act to meet the common danger; and our action at that time would be in accordance with constitutional processes. If it did not mean consultation, or something similar, with respect to which the Executive has the power, and if it meant utilization of the Armed Forces, I believe that Congress should and would have to decide.

Mr. President, that is just an illustration of the extended debate here that afternoon, in which this point was raised time and time again; and every one of these mutual defense agreements that we have made contains that same clause—that this Nation will act under constitutional processes—except one, and that is the one with the Rio Pact, as we call it, with the Latin-American countries. That is an altogether different situation, and it can be explained fully, but I shall not go into that now because I want to move on to the other aspects of this important matter.

I do not know who raised the points in the other treaties. Perhaps they were not raised that vigorously in the very first ones. At that time, with all deference, we were just going around the world and we were putting together these mutual defense treaties. I voted for most of them, but I never thought there was much mutuality about them. World affairs were not settled, and we thought we were preserving all the prerogatives of the Constitution and the responsibility of Congress, and according to the wording of everything, we were. Of course, we have come along since then and got into war when we did not even have a mutual defense treaty or anything of the kind.

Mr. President, with that background, and coming to the resolution itself—it will be debated more fully, and I expect to make other comments on it at another time—I am going to proceed in a moment to a more formal part of my remarks.

I want to add this, with emphasis: It is clear that the President has responsibility and that Congress has responsibility. I know that President Nixon, as any other President, would be careful to guard his powers and follow his responsibilities, and I know that the State Department is concerned about this matter. It would be a great tragedy if we did not get together some way—there is plenty of responsibility to be shared by all—and put some language on the law books that will be an assurance to the American people. That language should be an assurance, not that we are backing up or backing off from anything or running out on a commitment, but that hereafter we are going to follow the Constitution, the rule of commonsense, the provisions of these mutual defense agreements, and that Congress is going to be certain to put itself into this field of responsibility.

We talk a great deal about powers. I think we emphasize the wrong thing. We have to emphasize responsibilities. That is what the people expect of us. I think it will be tragic if we do not make every effort possible, all of us—Congress, the executive branch, everyone—to find some way to adjust any difference of opinion we have and get down to the big question and find a way to restore clarity and certainty to this situation, and put a law on the books, to be signed by the sitting President, that recognizes the responsibilities of both branches of the Government. Until we do that, we are not going to have the faith and confidence of the American people on this matter as the Nation requires. I can sense that with what commonsense I have. It makes me sense that.

I have never tried to stir up the people one bit about this war. To the contrary, I have said that we are already in, and we will have to tough it out. I told them that here and elsewhere many times, including in my own State—that we are already in it, that we must not run, that we must not appear to run, that we will have to tough it out. But I resolved to do what little I could to clear up the situation as to what might be the course in the future.

As I see it, that is what this resolution tries to do, and I believe that, as a whole, it is a good measure in its field. If we will just try to get together—the executive branch and the legislative branch—we can find suitable language. We might improve it a little, we might weaken it a little, but we can find something to carry out these principles.

As I have said, I have never tried to stir up the people, but I think they are looking to us. Someone said, "You ought to put it off until after the election." I think we ought not to put it off until after the election. This matter is in the back of their minds. They are not very articulate about it, but they know. The commonsense of the so-called common people is the most powerful thing in our Government, say what you will. They are not going to stumble over a few words here, either, about what the Court held at some time or about what was said about some trouble 100 years ago or 50 this respect—actively reflects what he has said day in and day out, not only that, and they are not worried about that. They want to know what is going to be the rule; and when they are called, they will be ready, if they think these processes have been followed. There is no doubt about that in my mind. But if they think these processes have not been followed, it will create doubt, and I do not know what might happen.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. MANSFIELD. Mr. President, I want to express my full accord with the support which the distinguished Senator from Mississippi, the chairman of the Committee on Armed Services, is giving the proposal before the Senate, relative to the making of rules governing the use of Armed Forces of the United States in the absence of a declaration of war by Congress.

I agree with the distinguished Senator when he says that the people of this country are looking for some guidance and, in that respect, what this proposal does is to emphasize the constitutionality of the situation in this vital area as it exists between the executive and the legislative branches.

This measure was reported unanimously by the Committee on Foreign Relations. The distinguished Senator will recall that when he offered his resolution some months ago, I asked to be considered as a cosponsor; and I have never deviated in that support, because I thought that the Senator was right then and is right now.

There is talk about referring this proposal, after full, complete, and deliberate hearings before the Committee on Foreign Relations, to the Committee on the Judiciary—to the graveyard. That is what it would amount to. I do not think that the proposal now before the Senate, on which I expect plenty of debate, should be referred to the Committee on the Judiciary under any circumstances.

I do not know how many Senators are against this proposal. I would say that as of now they are in the minority. I would hope that when the final vote comes, those who continue to oppose this proposal still will be in the minority.

What we are doing here is taking no rights away from the President of the United States. As a matter of fact, I think we are leaning over backward a little too much to see that he retains the authority given to him under the proposed legislation. But I do not want to see another Dominican intervention—25,000 U.S. soldiers and marines to put down a revolution in the Dominican Republic several years ago. That was done, not with the approval of Congress, but entirely on the responsibility of the President. What has happened since that time is that we have put hundreds of millions if not more than $1 billion into the Dominican Republic, and there is no end in sight.

I do not want to see another Vietnam. I recognize that what the distinguished Senator from Mississippi (Mr. STENNIS) has said—and he has been consistent in on this floor, but also down in his own State and throughout the country.

Thus, if consistency is a jewel, the Senator is a jewel in that respect.

But it appears to me that the administration, in adopting a late offensive, so to speak, against this proposal, has been joined by people who have been in previous administrations and close to Presidents which might influence their judgments in favor of the executive branch.

For example, I understand that Mr. Eugene Rostow is against this proposal. He, I believe, was in the Johnson administration along with his brother, Walt Rosow, who was a Presidential adviser. Arthur Schlesinger is also against what the Senate is attempting to do. George Ball is against what the Senate is attempting to do.

On the other hand, others who were close to the President such as George Reedy have, I understand come out in favor of it.

All these names ring familiarly to me, but I think that this is a matter which should be considered and will be considered on this floor. We are delighted to get advice and counsel on both sides or on all sides of a question, but when we approach a proposition of this high constitutional priority, I think that we should keep it here until we are finished with it. We should not refer it to the Judiciary Committee under any circumstances. If there are any amendments to be offered, let them be called up and let them be voted on and, finally, one way or the other, let the Senate decide.

I want to commend the distinguished Senator from Mississippi (Mr. STENNIS), the distinguished Senator from New York (Mr. JAVITS), the distinguished Senator from Virginia (Mr. SPONG), and all other Senators who have joined in trying to bring a little degree of order out of a constitutional situation which has been getting out of hand and which Congress, especially the Senate, has allowed to get out of hand.

This is an attempt to protect the President's constitutional powers, to reassert Congress constitutional powers, and to do so, not in a spirit of animosity, but in a spirit of partnership and accommodation.

I believe that the distinguished Senator from Mississippi is doing an outstanding service on the basis of his remarks in the Senate today, and the fine support he has given to this proposition.

Mr. STENNIS. Mr. President, I greatly thank the distinguished Senator from Montana (Mr. MANSFIELD) for his very fine remarks and for his support and his outstanding position of leadership in this and other fields.

I really believe that the Senate can better handle this problem by coming to grips with it and, as the Senator from Montana says, debate the matter fully, call up any amendments that may be offered and let the Senate pass on them, and then have a final vote.

Mr. President, I have a very high regard for the Committee on the Judiciary. As everyone knows, my colleague from Mississippi (Mr. EASTLAND) is a very fine chairman of that committee. Everyone

knows that we have worked together in harmony, so I make no reference to him when I say that I hope this problem is not referred to the Judiciary Committee or to any other committee. He and I have not talked in depth about this matter so that I do not know how he would vote on it at this time.

I want to say this, that I put together a resolution on this subject the best I could. No one requested me to do so. I had already made up my mind, as we got deeper into the Vietnam war, that I was going to try to do it at some appropriate time but, as long as I was engaged in the military procurement bills, I had some doubt as to whether I should undertake it then.

The distinguished Senator from New York (Mr. JAVITS), in his able way, filed a resolution that attracted my favorable attention. I commend him for his industry in that respect. Being frank about it, he had raised the issue and I decided that if I was going to act, I had better act then. I did, as soon as I could. But, in the meantime, I think I had already made one public speech about it. The Senator from New York and I have cooperated on it. I have certainly cooperated with him, as well as with the distinguished Senator from Virginia (Mr. SPONG) who, in my thinking, has been quite helpful in this field. It has been helpful to have the encouragement of the distinguished majority leader as well as the junior Senator from Missouri (Mr. EAGLETON). I am grateful to all of them. I speak solely on my own responsibility as a Member of this body, as I say, having been here when two wars were started without a declaration of war.

I see the Senator from New York is on his feet and if he wishes I will be glad to yield to him.

Mr. JAVITS. I thank the Senator from Mississippi for yielding to me. The usual clichés often heard in Senate rhetoric about the brilliance of the Senator from Mississippi, the high conscience expressed by the Senator from Montana, and the learning of the Senator from Virginia, do not seem apposite to the dignity and the importance of the matter we are discussing. But I think it is no secret at all for me to say—and I am the one to say it—that without the support of these Senators and without the close collaboration in the drafting of the bill by the Senator from Mississippi, the Senator from Virginia, and the Senator from Missouri (Mr. EAGLETON), we should not be here at all and we would not have such high expectations of favorable action by the Senate.

The words expressed by the Senator from Montana are built upon the base of confidence which has been inspired in this legislation precisely, because it has had such a diversity of points of view critically directed upon it. Without any prompting, I said yesterday exactly what the Senator from Mississippi said today. We have no false pride in the words we have settled upon in this bill. They are most carefully chosen. But, the idea, the principle, the fact that Congress is asserting its duty to participate—and I love that word "responsibility" which the Senator used—that is the most important thing.

People are getting cynical about politicians and those of us in Congress. They give us much too little credit. The pendulum always seems to swing much too far when the consciences and the deep feelings of the people contemplate the long-term future of this country.

Therefore, this kind of debate, in the tone employed by the Senator from Mississippi and the Senator from Montana, can help immeasurably to bolster the dignity of the country and the response of its citizens to it.

The Senator never uttered truer words when he said that the young people in this country have a fear of the irresponsibility through which they may be deprived of life or limb by some decision with which they feel no connection whatever. The best we can do there is to rely on the collective wisdom of Congress.

It is a fact, and this is a point that the Senator makes so tellingly—and he uniquely is in a position to make it—that there is a world of difference between the Gulf of Tonkin Resolution when we are "backing up" the President, and a Gulf of Tonkin Resolution when we know that we have the responsibility for the life of every young American just as much as the President does.

The argument that the President cannot respond quickly is entirely negated by the terms of the legislation and by one phrase—of which I was deeply reminded as the Senator spoke—in the testimony of Professor Bickel of Yale in which he said:

> The decisions of 1965 may have differed only in degree from earlier stages in this process of growth. *But there comes a point when a difference of degree achieves the magnitude of a difference in kind.* The decisions of 1965 amounted to all but explicit transfer of the power to declare war from Congress, where the Constitution lodged it, to the President, on whom the framers explicitly refused to confer it. (Italic added.)

In short, it is one thing to respond to an attack as President Johnson did, or the alleged attack on the destroyers. We must abide by that principle. That was that. However, now the sequel, this long war. What then? What did we have to say about it? To move from repelling an attack on destroyers to deploying 550,000 ground troops is a difference in kind. It is a war decision.

Mr. President, I take great encouragement from what has been said about this reference to the Judiciary Committee. I yield to no one in my respect for that committee. I served on it. That committee consists of a group of most eminent Senators. But, as the majority leader has said, such a move now would clearly be a move to pigeonhole the bill. When we look at the expert testimony we have had upon this matter, during the exhaustive hearings of the Foreign Relations Committee, one questions the need for future hearings.

There was Henry Steele Commager, probably a most distinguished name in U.S. history and matters pertaining to the founding of our Nation and our Constitution.

There was Richard B. Morris, professor of history at Columbia University, an equally distinguished expert of the Federal period and a great authority on Alexander Hamilton.

There was Alphens Mason, the most eminent authority on the Supreme Court and a great constitutional authority.

There was Alfred H. Kelly, professor of history at Wayne State University whose reputation on these matters is very high.

There was John Norton Moore, professor of the School of Law at the University of Virginia, who testified critically.

We had most enlightening testimony from Prof. Alexander Bickel of Yale Law School, who is not only a great constitutional authority, but who recently successfully argued the landmark, Pentagon papers case before the Supreme Court.

There was former Justice of the Supreme Court, Arthur J. Goldberg.

I would like to call to the majority leader's attention, because he is rough on his own party, that McGeorge Bundy and George Reedy are very much for this legislation. They were close advisers of President Kennedy and President Johnson.

There is before me a paragraph which appears in the RECORD on this measure which so sums up the feelings of the Senator from Mississippi. I would like to read it. Former President Abraham Lincoln said in his protest over the Mexican war while he was a Member of Congress:

> The provision of the Constitution giving the war-making power to Congress, was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our Convention understood to be the most oppressive of all Kingly oppressions; and they resolved to go frame the Constitution that no one man should hold the power of bringing oppression upon us.

Mr. STENNIS. Mr. President, I thank the Senator very much for his very fine remarks. I want to say that I have paid my respects and my genuine feelings to the Senator from Virginia (Mr. SPONG), who is also a coauthor of the Javits resolution. I did not state that before. The article written by the Senator from Virginia (Mr. SPONG) and published in the Law Review shows the depth of his study and learning.

Mr. SPONG. Mr. President, will the Senator yield?

Mr. STENNIS. Mr. President, I am happy to yield to the distinguished Senator from Virginia.

Mr. SPONG. Mr. President, I am aware that the Senator from Mississippi has not completed his remarks. I want to comment further on them at a later time. However, it is only fitting that I now say that, in my judgment, the Senator from Mississippi has consistently occupied the position he espoused here this morning from the very first debate on this matter in the Senate.

The Senator from Mississippi has read this morning from the January 26, 1954, CONGRESSIONAL RECORD. The Senator also testified during the hearings before the Foreign Relations Committee, and printed on pages 717–52 of the committee hearing record, along with a memorandum of his own, is the exchange between the Senator from Mississippi and

the later Senator from Wisconsin, Mr. Wiley.

Mr. President, the first Presidential war was the Korean war. A first departure from what had always been the constitutional understanding of the role of Congress was in 1954. And when that debate took place, it was the Senator from Mississippi who put his finger upon the role of Congress with regard to the Korean situation. Also, when the Senator from Mississippi made a speech last year, at his alma mater, Mississippi State, he was only reaffirming a view that he has held for a quarter of a century.

I think this debate and the formulation of this legislation have been helped immeasurably by his participation. But his interest is something that goes back much further than I suspect many of the Members of the Senate realize.

I shall have some other comments for later, but I will reserve those until the Senator has completed his remarks.

Mr. STENNIS. Mr. President, I am grateful to the Senator from Virginia. I appreciate very much what he has had to say.

Mr. President, people say to me, "I am surprised. You are the chairman of the Armed Services Committee. You ought to be helping to defeat this resolution." Perish the thought, Mr. President, I have not had a single military man so far mention this to me. I think they are better off, and they realize that they are better off. They have some congressional responsibility tied to the very critical decisions that are made that put them up front within a matter of hours.

I emphasize again that I want all of the rights and the prerogatives that the Constitution puts on the President placed on him very positively. I do not want any responsibilities taken away from him here. He has those responsibilities. Let him carry them out.

The Senator from Montana may remember that in trying to oppose an amendment or two that he has offered here I have said, "Let us keep the responsibility on the President of the United States in this very area." That is the way I feel. President Nixon is not a timid man. He can take care of himself.

I believe this bill is a good bill. It represents hard work by the cosponsors and the members of the Foreign Relations Committee, and, on the whole, I believe it is a better bill than any of the individual measures introduced by the distinguished Senator from New York (Mr. JAVITS), the distinguished Senator from Missouri (Mr. EAGLETON), myself, and others.

There has been some discussion of whether or not Congress has the authority to act in this area. It has been argued that Congress power extends only to the formal requirement of approving a declaration of war. The implication of such an argument is that by calling a war something else—"a police action," "hostility," or some other phrase—the requirement for congressional authorization can be avoided. It must be admitted that this requirement has been avoided too often in the past, Mr. President. We have already covered that matter. But to enumerate those occasions on which the United States has become involved in major hostilities such as the Korean war and the war in Vietnam, without clearcut congressional authority is merely to state the problem. They actually cite these precedents in favor of their position and in opposition to the resolution. These occasions are evidence of the constitutional imbalance that needs to be redressed. They are far from ideal models, in my opinion, for the future.

It is also important to understand that Congress has the authority not only to make those laws necessary and proper to the execution of its own powers, but also those 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." That is from the Constitution. This gives to Congress the clearcut authority to define and give content to the powers of the President and the executive branch as well as its own.

But I do not think this measure as now written takes one whit of constitutional power or responsibility away from the President of the United States.

Finally, as was pointed out by Mr. Justice Jackson in his famous concurring opinion in Youngstown Sheet & Tube Co. against Sawyer, there is "a zone of twilight in which the President and Congress may have concurrent authority"—"When the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb," the opinion states, 343 U.S. 579 (1952). Thus, when Congress sees the need to legislate and define authority in an area, such as this, in which it and the executive branch have concurrent responsibilities, Congress is clearly within its rights as long as it does not attempt to take away from the President any authority which is clearly his and his alone under the Constitution.

During the course of our deliberations on this bill, Mr. President, I have consistently counseled that we not attempt to make this bill do too much. There are those who disagree and take the position that this bill should apply to the current hostilities in Southeast Asia. I respectfully disagree. Section 9 of the bill exempts hostilities in which we "are involved on the effective date of this act." To some there may appear to be a sacrifice of principle here, but I am afraid that this important legislation could never be considered objectively if we attempt to make it yet another vehicle for assessing our involvement in the war in Vietnam. We must look upon this bill as a new start.

I emphasize that any reference I make to the present war is merely illustrating the problem and not trying to go back and assess blame or putting blame on anyone except myself.

There are other actions of the past which are undisturbed by the bill. I call the attention of the Senate to the last clause of section 3(4) in which those specific provisions of law not yet repealed which authorize the use of U.S. forces are exempted from the provisions of the act. If we later decide to reassess these statutory authorizations regarding Cuba, Taiwan, and the Middle East, we are free to do so. They are not at issue here in this measure.

It has been argued that this bill is an attempt to hamstring the President in his conduct of our foreign affairs. Mr. President, this is far from true. As I stated at the beginning, this bill is an attempt to reassert the constitutional requirement of cooperation and mutual responsibility between the President and the Congress before our country's forces are introduced in hostilities. In most cases in which such use is contemplated, the President would be required to come to Congress for prior authority under section 3(4) of the bill. The statutory authority may be flexible in nature. It could conceivably authorize long hostilities or short ones. It could be called a formal "declaration of war" or not, depending on the circumstances. But if such cooperation is required, it is my belief, and in fact I feel as if I know, that the President will be in a stronger position than he is now because he will not be tempted to risk a war which the Nation will not support.

I will not go into the matter of wars that are gone into with the purpose of not winning. I may say something on that theory, but that is another question that involves the support and dedication of the people of the United States. I think they are shaking their heads on that point.

Moreover, there is some flexibility in the language of the bill itself. The authority of the President to use the Armed Forces without prior congressional approval is recognized in the event of armed attacks upon the United States or its forces and in the event such use is required to evacuate American citizens in foreign countries. It is important to note that the President is also authorized not only to repel such armed attacks, but also to "forestall the imminent threat" of attack upon the United States or its Armed Forces. This language gives the President some flexibility and I would be the first to agree that in some cases judgment would be required. But absolute precision in such matters, Mr. President, is a figment of the imagination. What is clear is that a definition of conditions such as that contained in this bill is considerably more precise than the current state of affairs. Let me cite a bit of history: There has been much confusion over the legal justification for the war in Vietnam. For example, President Kennedy, in writing to President Diem of South Vietnam on December 14, 1961, based U.S. assistance on the Geneva Accords of 1954, although he sometimes offered other rationales as well.

Secretary of State Dean Rusk was particularly given to emphasizing the importance of the SEATO treaty as the primary legal justification for U.S. involvement in Vietnam.

President Johnson would often refer to the Gulf of Tonkin resolution as showing congressional support for the war; but he said on August 18, 1967, "we repeat now, we did not think the resolution was necessary to do what we did and what we are doing."

Under Secretary of State Nicholas Katzenbach, on the other hand, often pointed to the Gulf of Tonkin resolution as the decisive legal justification. He testified before a subcommittee of the House Foreign Affairs Committee, on July 28, 1970, that—

> In my opinion, the Constitutional authority to use our Armed Forces in Vietnam rests squarely on Tonkin and cannot otherwise be constitutionally justified.

President Nixon stated on July 1, 1970, that—

> The legal justification is the one I have given, and that is the right of the President of the United States under the Constitution to protect the lives of American men.

I believe that it is constitutionally and politically unsound to allow confusion of this magnitude to persist.

That is exactly what has existed. I am not trying to blame anyone. They found themselves in that predicament. I give them credit for doing the best they could.

Finally, Mr. President, there are provisions within the bill requiring Congress to act quickly in cases in which the President has used his emergency authority. In this respect, I wish to point out the provisions of section 7 to those Senators who may be interested. I believe that these requirements should assure any Senator that delay will not occur if a real emergency exists.

I will add only one last personal note, Mr. President. I respect the views of those who oppose this bill. The arguments which they make essentially center on the premise that there may be circumstances in which the President would be somewhat constrained in his actions under the bill's provisions. As I have pointed out, we have worked hard to make these contraints flexible in emergencies, but, it is true, constraints are there. This means that a President would have to take into consideration the Congress and the people it represents before involving the Nation in war and, consequently, a certain element of caution would be introduced into his thinking.

That does not restrict or restrain him; it is just an element of caution and accountability, and not accountability some years later, but direct accountability. This will make it more difficult for the President to take some types of military actions than would be the case if the bill were not law. That is the purpose of the bill.

We are not meant to be the sort of government that can fine-tune the world. Our Constitution is constructed in such a way as to make us slow to anger but awesome in our unity once a decision is made. These requirements of our Constitution may sometimes seem inconvenient in the short run, but it is my firm belief that they are the only solid basis for the long-range security and survival of our Nation.

That is what it is our duty to do here now on this subject. We must think of the long-term security and survival of our great Nation. I am glad we are going to have a good debate. I believe much good will come out of it and that a measure with content will be placed upon the statute books.

I thank the Senate for giving me the time that was allotted.

Mr. SPONG. Mr. President, will the Senator yield?

Mr. STENNIS. I am glad to yield to the Senator from Virginia.

Mr. SPONG. Again I want to commend the Senator from Mississippi for the contribution he has made to the debate this morning. I was pleased to hear the distinguished majority leader express the hope that this matter would not be referred to the Committee on the Judiciary. I have the greatest respect for that committee and for its membership. I think there are many distinguished lawyers on that committee who are capable of reading the very fine record that has been assembled and of discerning the legal points involved, but I am inclined to agree with the Senator from Mississippi that this is not primarily a legal question. And, those who would listen to the red herrings that are going to be presented here to membership of this body to the effect that this legislation endeavors to take any powers away from the President of the United States or to confer upon the Congress any new powers will be carried astray.

What we are seeking to do through this legislation is to set up a procedure that will bring about consultation, that will carry out the intent of the Founding Fathers that the war power be a shared power between Congress and the Executive.

The Senator from Mississippi is quite right in pointing out to this body, going back to the Korean situation, that not one of the mutual defense treaties is self-executing. They are not.

There may be those who will come in and say that the NATO alliance will be somehow impaired by the passage of this legislation. I find that somewhat ironic considering that two of the principal sponsors of this legislation are the distinguished Senator from Mississippi, the chairman of the Armed Services Committee, who has a long record of support for the North Atlantic Treaty Alliance and the Senator from New York, who has devoted years of his time to the work of the North Atlantic Assembly, which has sought always through its inquiries to bolster that alliance.

The fact of the matter is, as the Senator has pointed out, that, with the exception of the Rio Pact which he mentioned, none of these treaties is self-executing. All have language in them requiring that the constitutional processes be observed. All look to a consultation and a concurrence by this body in the event of any long-term military operation in which this country would become involved.

I wish to comment on one other point that the Senator has touched upon and—perhaps I presume in saying it—that I believe does trouble him. I agree with him that Vietnam should be excluded from this legislation. I agree that we should deal only in the future. But I think that the public, until very recently, was overwhelmingly of the opinion that, through their elected representatives, they participated in decisions involving the use of force abroad.

The Senator from Montana this morning brought up the matter of the Dominican Republic. That news reached the American public via page 1 of the New York Times, which I believe—showed a picture of congressional leaders coming out of the White House—after the President had advised them of what had already taken place. The public, however, reading the paper, was under the impression that there had been consultation and deliberations involving their representatives before the action had taken place. This was not the case.

The record of the hearings on this legislation will show that I asked the chairman of the Foreign Relations Committee, the Senator from Arkansas (Mr. FULBRIGHT), in my absence, to ask the Secretary of State if he could name one instance in the past 25 years where Congress had participated in the making of a use of force decision. The Secretary of State replied that he was reluctant to answer because he did not want to offend the chairman of the Foreign Relations Committee, but the only instance he could think of was the Gulf of Tonkin resolution. And, I question the degree of consultation there. But allowing that, in a quarter of a century, going back to the Senator from Mississippi's questioning of Senator Wiley, Congress has not been consulted in use of force decisions prior to the action taking place. The Members of Congress have been called upon only after the fact. Along the way, there have been efforts to point out the role of Congress, but somehow they have been swept aside.

Our late colleague, the Senator from Georgia, Mr. Russell, on the occasion of the adoption of the Cuban resolution, pointed out, when it first came to this body that it gave to the executive branch, some time in the future, the power to declare war, and he opposed it to the degree that that language was changed.

The former Senator from Oregon, Mr. Morse, argued, in the consideration of the Gulf of Tonkin resolution, that the Congress was giving away certain power to the executive.

What I believe has troubled the Senator from Mississippi—and perhaps I am presumptuous in saying this—is that we have been engaged in a war, on the part of this country, that the people for the most part have never fully understood. I believe—and I am perhaps not quoting completely accurately—that in the Senator from Mississippi's speech at Mississippi State the import of what he said was that we should never go into another war without the people of the United States in some way being involved and understanding what the war was about.

Mr. STENNIS. The Senator is correct.

Mr. SPONG. What we are trying to do in this legislation is not change the Constitution, not give to the Congress any powers that it does not have, not take from the President of the United States any powers which the Constitution gives to him. Instead, we are trying to establish a set of rules whereby the people, through their elected representatives, will have some say in the making of use of force decisions. And in trying to do so, we have set in safeguards which, of all

the people in this body, I know the Senator from Mississippi appreciates the most, to guarantee that the security of this Nation is not impaired where emergency situations are concerned.

But the Senator has rendered a particularly great service in this debate by pointing out the fact that we are not taking way from the President any powers, that we are not doing anything with regard to NATO or to the strategic balance in the world today, that we are not doing anything that would impair the security of this Nation. As the Senator has said, it is not primarily a legal question. It is a question of assuring that, somehow, in the future, people will participate in the making of decisions that affect the question of war and peace and affect their lives.

Mr. STENNIS. I thank the Senator for a very fine statement on the issues and comments and the real points involved, which he has stated splendidly and clearly and with greater force than I myself could. He has already contributed greatly to the bill and the debate, and will continue to, I know.

Yes, on the NATO matter that the Senator from Virginia mentioned, if there is anything wrong with the language or any impairment on that command score, the Senator from Mississippi would be one of the very first to agree that that language be corrected and that matter be made clear.

But I do not think that that will be a real issue here on the floor of the Senate.

I thank the Senator again. Mr. President, I yield the floor.

Mr. GRIFFIN. Mr. President, on behalf of the distinguished Senator from Arizona (Mr. GOLDWATER) I ask unanimous consent to have printed in the RECORD a statement by him entitled "Contradictions Between Text of War Powers Bill and Explanations Given by Its Sponsors."

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

CONTRADICTION BETWEEN TEXT OF WAR POWERS BILL AND EXPLANATIONS GIVEN BY ITS SPONSORS

(By Senator GOLDWATER)

The specific areas where I believe there is a contradiction between the plain text of the war powers bill and the explanation given yesterday by Senator JAVITS are these:

1. "Explanation: Senator Javits claims the President can use his own judgment and discretion as to when an emergency fits one of the four situations when he can use armed forces under the bill.

"Text: Nowhere in the bill is there any language providing that the President may make an independent judgment of any kind under the bill. In fact, a legal brief introduced in the hearings record by Senator Javits argues that the President is the mere executive arm of the Congress who must follow the dictates of the legislative branch.

2. "Explanation: Senator Javits claims the President can take whatever forestalling action is needed without waiting 'until the bombs actually started landing on our soil.' He claims the bill is not 'inflexible.'

"Text: The actual text of the bill requires that before the President takes any defensive measure there must be an armed attack on the United States or 'the direct and imminent' threat of attack. In the case of an attack on a foreign nation, for example, Turkey, the 'direct' threat would be to that nation, not, to the U.S. The threat would be imminent to that nation, but distant to us. If a move against Turkey carried with it an implicit threat against the United States, it would be because the attack set in motion a chain of events which ultimately might represent a serious threat to the U.S. If it is the sponsors' purpose to allow the President flexibility in these circumstances, then they intend 'direct' to mean 'indirect,' and 'imminent' to mean 'some indefinite date in the future.' They might as well ask us to read the word 'black' as meaning 'white.'

3. "Explanation: Senator Javits claims it is the purpose of section 3, clause (4), to ratify the Formosan, Cuban, and Middle East Resolutions as authority for the President to respond to crises in these areas.

"Text: The bill plainly states that no provision of law now in force shall be construed as authority for Presidential action unless such provision 'specifically authorizes' the introduction of troops in hostilities. But all three area resolutions mentioned do not specifically grant authority for the commitment of U.S. forces in armed actions. One, the Formosa Resolution, squarely provides that 'the President of the United States be and he hereby is authorized to employ the Armed Forces . . .' In contrast, the Cuban Resolution states only that 'the United States *is determined*' to take certain steps. The Middle East Resolution declares only that 'the United States is *prepared* to use armed forces' and qualifies even this declaration by expressly providing that such employment shall be consonant 'with the Constitution of the United States.' It must be noted that a similar phrase 'in accordance with Constitutional processes,' as used in our mutual defense treaties, is taken by the authors of the war powers bill to mean that *no* specific authority is given pursuant to such treaties. The sponsors do not explain what the difference is between the term 'Constitutional processes' as used in treaties and 'consonant with the Constitution' as used in the Middle East Resolution. In short, the authors are reading section 3(4) as containing a proviso that all three area resolutions shall constitute specific authority for emergency use of American forces, when the section itself does not contain any reference at all to such resolutions.

4. "Explanation: Senator Javits claims there is full authority for the U.S. 6th fleet to be deployed in the Mediterranean at will by the President during times of crises.

"Text: The bill itself specifically directs that U.S. forces shall not be introduced in situations where imminent involvement in hostilities is a risk except in the narrow situations where the U.S. or U.S. forces are attacked or directly and imminently threatened with attack. In the six day war of 1967, for example, the U.S. itself was not directly threatened with attack; nor was there any immediate threat to American forces. There was an open and imminent threat made by Russia against Israel. President Johnson's prompt response by moving the 6th Fleet into the danger area in order to forestall Russian pressure on Israel would be prohibited under S. 2956 because no threat had been made against our own forces. For the sponsors of the bill to say that an American response is authorized in these facts reveals that the authors do not understand the implications of their own bill.

5. "Explanation: Senator Javits claims that section 3 allows the rescue of citizens captured in ships on the high seas or in aircraft flying through international air space.

"Text: The section itself limits action to protection while evacuating citizens 'from any country' in which such citizens are present. It appears strained to refer to a naval vessel or an aircraft as a 'country' and if the sponsors truly intend for citizens to enjoy protection in these situations they should redraft the bill accordingly.

6. "Explanation: Senator Javits claims it 'to be a faulty and distorted reading of the legislation,' to infer that the bill would prohibit U.S. personnel in the NATO integrated commands from exercising any functions without additional Congressional authorization.

"Text: The language of the bill flatly states that specific statutory authorization is rerequired for the assignment of members of the Armed Forces of the United States to 'command' or 'coordinate' in the movement of the military forces of any foreign country or government at any time when there is an imminent threat that the forces will become engaged in hostilities. At the very moment when our participation in the NATO unified command is needed the most, the bill thereby prohibits them from exercising any functions."

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS DURING THE ADJOURNMENT OF THE SENATE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to file reports during the adjournment of the Senate between the hours of 10 a.m. and 3 p.m. on Monday, April 3, 1972.

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

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. CHILES). The Chair, on behalf of the Vice President appoints the following Senators to be members of the Joint Committee on Inaugural Ceremonies of 1973, pursuant to Senate Concurrent Resolution 63, 92d Congress; the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), and the Senator from Kentucky (Mr. COOK).

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

TRANSACTION OF ROUTINE MORNING BUSINESS AND RESUMPTION OF THE UNFINISHED BUSINESS ON TUESDAY, APRIL 4

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, immediately following the recognition of the two leaders under the standing order, there be a period for the

transaction of routine morning business of not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Chair lay before the Senate the unfinished business.

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

LEAVE OF ABSENCE

Mr. ROBERT C. BYRD. Mr. President, the distinguished junior Senator from Indiana (Mr. BAYH) will be absent from the Senate from March 29 through April 10, inclusive, while attending an interparliamentary conference in Africa. On his behalf, I therefore ask unanimous consent that, under rule V he be granted a leave of absence from the Senate during those dates.

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

AUTHORIZATION FOR THE VICE PRESIDENT, THE PRESIDENT PRO TEMPORE, AND THE ACTING PRESIDENT PRO TEMPORE TO SIGN DULY ENROLLED BILLS AND JOINT RESOLUTIONS DURING THE ADJOURNMENT OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until 12 o'clock meridian on Tuesday next, the Vice President, the President pro tempore, and the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions.

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

AUTHORIZATION FOR THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES FROM THE HOUSE OF REPRESENTATIVES DURING THE ADJOURNMENT OF THE SENATE

Mr. ROBERT C. BYRD. I ask unanimous consent that during the same period the Secretary of the Senate be authorized to receive messages from the House of Representatives.

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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 proceed today not with formal remarks but with a commentary of a sort that I am about to explain.

I hold in my hand the latest issue of the Yale Law Report for the fall and winter of 1971 and 1972. It is an exceedingly interesting issue because of its lead article, a record of a debate between two distinguished Yale professors on the war-making powers. The two professors have been referred to here many times. They are Prof. Alexander M. Bickel, who is the DeVane Professor in Yale University, and Prof. Eugene V. Rostow, who is a distinguished professor of law at Yale University. The two men are of unquestioned integrity in their academic pursuits. They both enjoy national repute in regard to the probity of their minds.

I ask unanimous consent that the debate and the exchange between these two very distinguished professors be printed at this point in the RECORD.

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

THE POWER TO MAKE WAR: A DEBATE BETWEEN ALEXANDER M. BICKEL AND EUGENE V. ROSTOW

(EDITOR'S NOTE.—A highlight of the alumni weekend in October was the Saturday morning exchange between Alexander Bickel and Eugene Rostow on the subject "The President, Congress, and the Power to Make War." Mr. Bickel, De Vane professor in Yale University, was the successful defense attorney for the *New York Times* last summer in the Pentagon Papers case. Mr. Rostow, Sterling professor of law and public affairs, served as undersecretary of state for political affairs, 1966–69.

(What follows is an edited and abridged version of Mr. Bickel's remarks, Mr. Rostow's response, the debate between them, and some questions and answers.)

Mr. BICKEL. President Johnson's decision of 1965 to intervene massively in Vietnam amounted to an all but explicit transfer of the powers to declare war from Congress, where the Constitution lodged it, to the President, on whom the framers explicitly refused to confer it. The constitutional division of powers was repudiated in the sincere but I think grievously misguided conviction that it no longer suited modern conditions.

I will touch only briefly on such justifications for the decision to wage war in Vietnam as the supposed SEATO obligation and the Tonkin Gulf Resolution. As I read it, the South East Asia Treaty simply refers us back to where we started, for it obliges us to act only in accordance with our own constitutional processes. The Tonkin Gulf Resolution, which incidentally declared itself to be consonant with the Constitution, also in my judgment leads nowhere. There was, in my view, consonantly with the Constitution, no need to come to Congress for authority which the President has, as, for example, to fire back when attacked, and it was no use coming to Congress for authority the Congress cannot constitutionally delegate at large, for prospective use in undefined circumstances. It is claimed, finally, that Congress ratified the executive action by appropriating moneys to support it and to steadily enlarge it. This Congress assuredly did, and assuredly it did so partly under a misapprehension that is was in principle obliged to extend support, even if free to make some independent judgments of its own on questions of detail, and that in any event it was assuming no general responsibility by extending support. This is precisely the misapprehension which I think it necessary to dispel.

Now—I say this somewhat cautiously—few observers will deny the import of the original constitutional arrangements. The largest claims that are entered for independent presidential power rely rather on recent practice and on assessments of modern conditions which, it is said, require a revised conception of the original separation of powers. Our Constitution is, after all, a living organism, capable of growth and of adaptation. But surely it grows and adapts itself without losing its essential shape. It does not undergo radical mutations except by the process of amendment. There is a considerable difference, in my judgment, therefore, between extending the President's war-making power by another degree, and leaping over the brink to a change in kind, to an explicit, notorious, inexpiable alteration in the shape of the original structure.

However, be that as it may, the argument about constitutional adaptation bids us ask whether the change in the division of war-making power between President and Congress has been an element of beneficial growth in the Constitution. And if this is the question, it makes a difference how one judges the Indochina war. For myself, I formed the opinion some years ago that the war has been a moral and practical disaster, and I believe further—which is the important point—that we might have avoided it, or might at least avoid its repetition, if our instutional arrangements were such as to foreclose presidential wars in circumstances of this sort.

What propelled us into this war was the corruption of the generous, idealistic impulse that informed and sustained this country's foreign policy through the Second World War and in the years after. I use the word corruption not to connote evil, but merely decay. The impulse decayed into self-assurance and into self-righteousness. It became, as generosity and idealism assuredly can, oppressive and in the end cruel.

But the war has been wrong too for another and for present purposes more interesting reason, an institutional reason. A democracy cannot well and should not wage a war which a substantial and intense body of opinion resolutely opposes on both political and moral grounds. Even autocracies cannot effectively wage wars in such circumstances. The Constitution, of course, provides for no special majority. Congress may declare war by the narrowest of majorities. But this is not a question of law; it is a question of forbearance, of continence.

The double error of this war is a product in good part of the imbalance we have permitted in the division of war-making power between the President and Congress. The President is a single official. The discipline of the democratic process plays on him only grossly, at wholesale. Congress, on the other hand, whatever its faults, is institutionalized communications, access, participation. The presidency can speak for a broad, existing consensus, and its genius is action. But its antennae are blunt, and it can mistake silence for censensus. Its errors are active ones, like the Indochina war—sins of commission. The genius of Congress lies precisely in its antennae, in its differentiated sensitivity. Its errors are generally those of irresolution, sins of omission, and I think we should have learned that by and large these are the less grave sins, in government at any rate. I do not believe that Congress, if it had been conscious of its own responsibility, would have plunged us into the Indochina war or let it run as it has.

Now if, as I believe, we have permitted a serious imbalance to arise between Presi-

dent and Congress, what is to be done? Does it not follow that the Supreme Court, which has more than once been asked to declare the Indochina war unconstitutional, should do so?

For my part I think the Court has been wise to exercise its discretion so as to avoid passing on the constitutionality of the war. If it did pas on the war, we would match the wrong way of getting into a war to the wrong way of getting out of it.

I think the answer lies with Congress. The practice of recent decades or of a century cannot have worked a reduction in the residual legislative power of Congress, if Congress should but exercise it. The power may have lain in disuse, but it's there, as effectively there, as legitimately, as the day it was conferred. And from it I think flows the duty to act.

Mr. Rostow. I think Mr. Bickel and I agree that the presidency is one of the two great constitutional innovations of 1787, the other, of course, being the institution of judicial review. There are all kinds of theories about the nature and scope of the presidential power, ranging from the colorful ideas of the *Curtiss-Wright* case to those which would confine the executive within the narrower possible limits.

Let me start with another proposition on which I think Mr. Bickel and I would agree: that the written Constitution of 1787—and what is said in that Constitution about the war power, both of Congress and of the President—has to be read, like any other legal document, in its matrix of history, purpose, and function. One of the main purposes of the constitutional scheme, viewed against the background of history and of experience, was to establish a national government capable of taking its place as a sovereign nation in the family of nations, and capable too of protecting the strength and security and welfare of the nation against the hazards of world politics; and to establish an independent presidency as part of that national government, a presidency which would be one of the three branches of government. These are the purposes in terms of which we must try to define the respective roles of President and Congress in the process of conducting the foreign relations of the nation.

I should indicate here an important disagreement between Mr. Bickel and myself. He seems to feel that foreign policy is a matter of generous impulse and of idealism. I do not. I regard foreign policy exclusively as a matter of national interest. I believe that no President and no Congress, acting separately or together, has the moral or the constitutional right to send a single soldier into battle unless, in their judgment, serious interests of the nation—and not generous impulses—are at stake.

The constitutional arguments about the presidency follow a familar pattern. One starts by assuming that the tripartite division of functions in the Constitution is going to be airtight, and discovers that it is never airtight. The President receives ambassadors; he conducts foreign relations; he carries out foreign policy; he initiates some foreign policy. The Senate advises and consents on two subjects—and two subjects only—the making of treaties and the appointment of public officials. The President commands troops. Congress appropriates for them. And so on. It is a pattern of divided power which is also shared, so typical of our Constitution. As Justice Jackson once pointed out, the President has some clear powers of his own, and Congress has some which it alone can exercise. In between is a gray zone. On problems within that zone, the nation speaks with a stronger voice when Congress and the President act together.

The founding fathers knew a great deal about public international law and the distinction between the law of war and the law of peace, which allows many uses of force in situations which did not invoke *jus belli*. It was established in the turbulent decades immediately after the adoption of the Constitution of 1787 that the sole and unique authority of Congress to "declare" war was not the exclusive mode through which the government of the United States could use force. Mr. Bickel has assured me that he recognizes that the United States did from the beginning use force in times of "peace," that is in times of peace so far as the categories of international law are concerned. The issue on which Mr. Bickel and I disagree is whether there has in fact been a change in the pattern of constitutional usage in the division of the war powers between Congress and the presidency in the twentieth century, and most especially in the year 1965: a change in the pattern of constitutional usage, that is, and not in the gravity of the problems presented.

In the eighteenth and nineteenth centuries, force was used in times of peace for a variety of reasons, ranging from self-help in the collection of debts and intervention in situations of chaos and disorder to the suppresion of piracy and the slave trade. Sometimes force was needed for great purposes of foreign policy. Force was used many times by the President alone in the name of the Monroe Doctrine, for example, which was a presidential declaration, not a congressional one. In the history of the use of force by the United States, there is nothing so dramatic as Commodore Perry's purely presidential mission to Japan. Some of those occasions when force was used were activities of the President alone in carrying out foreign policy, and in some the President had the formal support of Congress. Many of these affairs involved extended campaigns. There have been many more than a hundred and fifty episodes in our history in which force was used. There have been five formal declarations of war, and only a half dozen more Congressional authorizations. The notion that there has been a great change in the division of power between Congress and the presidency in this complex field in the twentieth century is, in my view, a myth.

The central thesis of Mr. Bickel's paper is that in 1965 an important change occurred in the distribution of authority over the use of force between Congress and the President. We should look at this claim in the light of Korea. The United States position about Korea, as articulated by Secretary Acheson, distinguished between those areas where we had troops stationed, where he said that any attack would be regarded as an attack on the United States, and those areas, like Korea, where we had no troops stationed. If there were an armed attack on countries in the latter class, he said, reliance would be placed first on the reaction of the nation attacked and, second, upon the world community which had expressed itself in the charter of the United Nations, which, he said, until that point, had not proved itself a weak reed. Of course, at that moment the communist nations were boycotting any organs of the United Nations in which the Republic of China was represented, a fact which permitted the United Nations to vote as it did in the Korean case.

President Truman then faced the question of how the United States should act under the Constitution to carry out the vote of the Security Council. As you know, a series of accidents led to his proceeding formally without a special Congressional Resolution, like the Tonkin Gulf Resolution, the Formosa Strait Resolution, or the Mediterranean Resolution of 1957. In Mr. Acheson's magnificent book, *Present at the Creation*, some aspects of that decision are discussed. There was never any serious doubt, Mr. Acheson says—in the sense of nonpolitically inspired doubt—of the President's constitutional authority to do what he did, acting to see to it that the treaties of the United States be faithfully executed. It is the wisdom of Truman's decision not to ask for congressional approval that has been doubted. Congressional approval, it has been argued, would have obviated later criticism of "Truman's war" in Korea. In my opinion, a congressional resolution to back the treaty would have changed pejorative phrases, but little else. The later criticism of the Korean War was inspired by the long, hard struggle, the casualties, the cost, and the frustration of war and not by serious doubts as to the constitutionality of the procedures by which it was authorized.

When the Korean War was over, the debate over the constitutional propriety of President Truman's action continued, and grew more intense. Senator Bricker and others proposed a constitutional amendment that would have curbed the presidency and limited the President's power to act in the field of foreign affairs. Many of those who are now supporting Senator Javits in comparable moves to curb the powers of the presidency fought the Bricker amendment.

The experience of Korea, and the history of the fight over the Bricker amendment, led President Eisenhower to develop the practice of getting congressional resolutions in advance, approving the presidential use of force in certain areas of tension, when in his judgment the use of force became desirable or necessary. Eisenhower used another form of Congressional participation on a large scale, namely the practice of making treaties like SEATO, that would publicly commit the power and influence of the United States in advance of trouble to assure security, and to deter aggression.

Both these practices were relied upon in Vietnam. The SEATO treaty, which was expressly drafted as a solemn warning against the use of force to take over the small, weak states of South East Asia, required each signatory to act in accordance with its constitutional processes to repel armed attack on any one of those states. The language was mandatory. And Congress decided, in passing the Tonkin Gulf Resolution in 1964, that that resolution, and not a declaration of war, was the wise and prudent constitutional method for approving and supporting what the President was doing, or might do, in carrying out our obligations under the treaty, and protecting the national interests which, it reiterated then, were in its judgment at stake in the conflict. In this decision, Congress was supported by a pattern of constitutional usage going back to John Adams' undeclared and limited war with France, which had been expressly approved as constitutional by the Supreme Court in 1800.

When President Johnson decided in 1965 to send troops to Vietnam on a large scale, therefore, he was acting on a much firmer constitutional base than Truman had in Korea, a regional defense treaty expressly addressed to the situation which had developed, and a congressional resolution backing the use of force under that treaty to protect South Vietnam against the armed attack which it found to be going on. I fail therefore to discover any basis for claiming that Johnson's decisions in 1965, however debatable from the point of view of wisdom or prudence, had constitutional dimensions, compared to those of Truman in Korea, or those of many presidents over the past century or more.

Mr. Bickel recognizes the constitutional force of these facts. He attempts to escape them by an argument I find surprising, and which I regard as erroneous: the argument, namely, that Congress cannot delegate its responsibility for authorizing the use of force in advance. That argument is met, I think, by two aspects of the situation in Vietnam. First, there was no delegation in advance, since force was being used in Vietnam by the United States at the time the Tonkin Gulf

Resolution was passed. And second, a large number of cases in the Supreme Court have approved delegations of discretion in advance to the President in situations defined far more generally than the specific and precise authority contained in the Tonkin Gulf Resolution to carry out the provisions of the SEATO treaty in protecting the state of South Vietnam against an armed attack then going on.

As Justice Goldberg has remarked, the Constitution of the United States is not "a suicide pact." It established a government capable of defending the national interest in the changing, and sometimes dangerous realm of world politics. The basic security of the nation is no longer protected by the British fleet, as was the case between 1815 and 1914. Constitutional rules, the principles of democratic responsibility, and the sharing of divided powers between President and Congress, can require no more than what was done by both the political and democratically elected branches of our government in Vietnam. In that case, unlike Korea, the President and the Congress met Justice Jackson's test: they acted together, and therefore the nation spoke with a single voice.

Many believe, of course, that what we have done in Vietnam, was a mistake—that the commitment—should never have been made, or once made, should never have been honored. We have a natural tendency to think that whatever we dislike very much must also be illegal, or indeed, unconstitutional. This hardly follows. Error in the use of constitutional authority, if error was made, does not justify constitutional change. The nation did not abolish or weaken the Supreme Court even after *Dred Scott*. So now, those who believe that the tragedy of Vietnam was an error should not cripple the strong and independent presidency it was one of the great concerns of the founding fathers to establish in the dangerous world of today, we have never needed the presidency they created more acutely and more continuously.

THE EXCHANGE

Mr. BICKEL. I have listened with great interest to Gene, as I have done for fifteen years, and as I hope I do it for many more. But as has also happened at times in the past fifteen years, I am unpersuaded. I don't propose to take much of the short time that is left to us in distinguishing the Vietnam war from the Louisiana Purchase and from Commodore Perry's expedition. But perhaps before I get to more central matters, a word on the Bricker amendment would be in order.

I was, as it happens, in the State Department at the time, and ambivalent about the Bricker amendment. Although I'm generally averse to amending the Constitution—we can do plenty by interpreting it, can we not?—I was, subject to that general predisposition, of two minds. It seemed to me that a substantial part of the Bricker amendment stated what I understood to be the existing constitutional position, and would have been unobjectionable in substance. All it attempted to do was to dissolve a doubt left in the wake of *Missouri* v. *Holland* on the question of whether a treaty can override the Constitution. It had no bearing that I could see on the exercise of the President's war power. I think even the positions of those who opposed the Bricker amendment quite strongly, more strongly than I did, are reconcilable with positions like my own, taken today.

Passing, under pressure of time, the problem of our purpose in entering the war, whether we entered out of self-interest or from a decayed, if previously laudable, impulse—passing that, let me come to what is really at issue between us, and it hangs on Korea and the Tonkin Gulf Resolution. I am not about to adjudicate the constitutionality of the Korean War. I stress a single point about it, which distinguishes it for me, without my necessarily accepting its constitutionality; it fits into prior theory, as I continue to understand it, of reactive presidential power, which is justified on the basis of the genius of that institution. The President can respond expeditiously in an emergency, in reaction to someone else's action. That certainly typified Korea, and that did not typify the Vietnam experience.

I would add about Korea that it was a massive attack by organized armies across a previously established border. We had troops with a full-scale establishment in Japan, right across the ditch. Thus, the surmise that this was a venture which threatened the safety of an established American military presence seemed plausible.

On Tonkin Gulf, the difficulty, I think, is this. The resolution and SEATO are not to put too fine a point on it and meaning what I am about to say to carry no pejorative, moral, or ethical implications—this is the way that kind of business was done, with calculated ambiguities which were thought to best fit the situation and achieve proper purposes—not to put too fine a point on it, the resolution and the treaty are vague, ambiguous, disingenuous documents depending upon each other, interlocking with each other. The SEATO treaty tells you we will act. My brother Rostow emphasizes—and he's entirely free to, the pot of italics is available to anyone, and we all spray them about—emphasizes the word "will." We *will*. Each nation *will*. And afterward *sutto voce*, "in conformance with our constitutional processes." Then comes the Tonkin Gulf Resolution, and it says, by God, our chests are still hairy and we are still powerful and we have muscles, and our President is our leader, and he *will*—again more softly now—consonantly with the Constitution, carry out the SEATO treaty, which is in accordance with our constitutional processes. Well, I am left, I must say, in a circle, into which I believe I was meant to be inserted, and that is not, I think, an acceptable procedure. The well-meant, but to me unacceptable premise was that this is all window dressing anyway, that this is all something you do for external political purposes, for purposes of showing yourself more united than in fact perhaps you are, because everybody in the game—the Congress that votes, the President who proposes—acts on the belief that if the President wants to, he can act on his own anyway. This is Mr. Rostow's premise. These are no concessions of power to Congress. They are concessions to external appearances. So it doesn't matter whether the constitutional position is understood. It doesn't matter whether it is understood what the treaty obligation really signifies, and what the action that Congress takes really means, because Congress is only adding its own assent, its own, if I may say so, irresponsible assent to an action for which the responsibility rests elsewhere. That is not democratic government, nor is it government that can work, the Civil War to the contrary notwithstanding, and I won't discuss the Civil War with my brother Rostow. It is quite a different matter.

Now, that leaves me with a delegation point, a serious point, for lawyers' discussion. My proposition is drawn from *Schechter*, drawn more recently from a case in the very area that we are talking about, *Kent v. Dulles*, the passport case. It is a proposition that recoils from the burning eloquence of that great construer, that great expander of federal powers, George Sutherland, in the *Curtiss-Wright* case. My premise is that presidential power here as in domestic affairs is limited. This is the premise of Justice Jackson's concurrence in the *Steel Seizure* case. Residual power is in Congress. The President's power does not take in all of the zone of twilight when Congress fails to act.

On that premise, I suggest that Congress cannot say, prospectively, without limiting the area, limiting the means, defining the circumstances in any fashion, that if there is trouble in this half of the globe, or even that if there is trouble involving people with whom we have treaties and understandings as between them and others—that if there is trouble, you go and do whatever is necessary. Congress cannot so conduct itself in any other field where it and the President share power. To allow it is to rob the exclusive congressional power to declare war of any meaning at all. Only the *Curtiss-Wright* case stands for the proposition that somehow this sort of a delegation—and it was an infinitely narrower one in *Curtiss-Wright* itself, and probably perfectly valid under current law—only that case stands for the proposition that somehow in foreign affairs delegations are permitted which would be intolerable otherwise. That is my proposition and I have no great hesitation in resting on it.

Mr. ROSTOW: This is a treaty, with a clearly defined standard to control the "delegation" in it, a specific geographical area, and specific conditions spelled out for action.

Mr. BICKEL. A specific area, yes. That part of the world covered by that treaty, which in turn——

Mr. ROSTOW. This is afterwards.

Mr. BICKEL. But you can't rely on the treaty for any more than describing that part of the world. And then it tells you, in conformance with the Constitution. I'm not parsing the text of Tonkin Gulf because I have my difficulties with the text, and I also have some difficulties with the legislative history about which I am bound to say that whatever was said on the floor, a set of facts had been put before the Congress which cannot have given rise to the vision of five hundred thousand troops fighting in Vietnam. A destroyer had been fired on by two gunboats.

Mr. ROSTOW. They had the experience of Korea just behind them, Alex.

Mr. BICKEL. Well, "just" is a little——

Mr. ROSTOW. What do you mean, "just"?

Mr. BICKEL. Eleven years.

Mr. ROSTOW. Well, eleven years isn't much in the seniority of the Senate.

Mr. BICKEL. Well, all right, leaving the legislative history out of it, here is a document that—reading it for the most that is in it—hands over in an area defined by that treaty, hands over to the President in his discretion, no standard, no telling him what kind of an attack, where, how, land, sea, air, whatever—in his discretion, the power to take all measures necessary. In other words, the power to go to war. The assumption which, I repeat, was widely shared, was that after all, Congress didn't have to look at this thing too closely. They weren't doing anything that was really going to be their responsibility. They were just adding themselves on, helping the President do something that he could do on his own anyway.

Mr. ROSTOW. I'll take thirty seconds to comment on the notion that any vote of the Congress, any public act of the United States is, or can be considered, a disingenuous fraud. With this I disagree most profoundly. I think the vote was in the vote on the Tonkin Gulf Resolution, which I think is the central point of disagreement between us. I put to one side the question whether these worldly and well-informad men, who live in a maze of gossip and information, really were brainwashed. They weren't. But their vote was a vote in the spirit of Justice Jackson's celebrated opinion in the *Youngstown Sheet and Tube* case, namely, in an area of constitutional power where there is doubt, a gray area where it was desirable from the point of view of the foreign policy and security of the United States, that the United States be seen to be united that the President and the Congress be seen acting together. Whatever men say now about their votes, I do not believe that we can accept for one second the view that an official act of the United States is window dressing, a fraud, or shadow boxing. It is an official act, intended to have all its legal consequences. What Mr. Bickel is saying now recalls the

debate in which he has made a very distinguished contribution, namely, the Southern argument that the Fourteenth Amendment is a nullity because it was ratified by legislatures of states that were under military occupation, and under circumstances which very often amounted to fraud. All that was true, but nonetheless the Fourteenth Amendment stands. I don't think we can accept that argument for one second about the status of public acts of the nation.

MODERATOR. We have a few minutes for questions, and would you indicate to whom you wish the question addressed.

Question. I have the feeling, Professor Bickel, that you are really attacking the whole concept of collective security arrangements that started with the League of Nations and which was inherited down through the SEATO treaty, so far as they give a prior commitment to go to war. Would you comment?

Mr. BICKEL. I think those security arrangements were entered into in something of the ambiguous frame of mind that I referred to a moment ago, when I found myself in that circle described by SEATO and the Tonkin Gulf Resolution. When NATO, the first of them, came to the Senate, the issue was confronted, and the secretary of state solemly told the Senate Foreign Relations Committee that we were not obliged to do anything except in accordance with our constitutional practices. My brief experience of a year at the outskirt of NATO diplomacy indicated to me that everybody there knew—I think the late Charles de Gaulle knew it very well—knew what the meaning of these arrangements could possibly be, knew that a country of this size, of this diversity, could not, projecting itself, projecting its politics—and its interests, if you will—twenty and thirty years into the future, be relied upon to act in terms of some unbreakable, stated commitment. Therefore, that knowledge, I think was put into those treaties. And in any event, if there's one thing the Vietnam experience should have taught everyone, it is that we cannot fight in sustained fashion and effectively except by somehow managing to gather a present consensus, a present, not prospective, and not twenty years ago consensus that we must fight. Any foreign head of state who doesn't know that ought to have his head examined. That is the essential fact. That is the essential condition that has made notions about America the Absolute Protector, which may have held in the early fifties, dated. And I think they are dated. I think, however, that what I am suggesting is simply that we recognize in reexamining our own constitutional arrangements that the impulse to distort them in order to serve the supposed imperatives of a world role was a wrong impulse, and that even the distortion didn't help, as Vietnam proved. I do not urge abandoning international agreements. I urge a sensible and realistic understanding of them.

Professor MYRES MCDOUGAL. Mr. Chairman, I'd like to wonder whether or not the President's or the Congress' power to delegate to the President is quite as limited as Mr. Bickel suggested. In addition to Justice Sutherland's fantasy in the *Curtiss-Wright* case, what would you do with the thousands of executive agreements going back to Washington's first term?

Mr. BICKEL. Professor McDougal and I haven't had this debate, haven't really joined on this issue between ourselves since 1957, I believe, when I first taught the subject and Mac found the only course conformable to his general delicacy of feeling in questioning me to be to hand a question to a student next to whom he was sitting, who would then flower forth with a glorious question right to the solar plexus—and I was not supposed to know where it came from. Seriously. I would say this. I'm guessing, but I would say an enormous proportion of executive agreements fall either within that area which is the President's own, that is, which is the area of his own independent responsibility, and incidentally if he didn't want to transfer——

Mr. MCDOUGAL. That includes tariffs.

Mr. BICKEL. No, no, no—certainly not. The largest number of them fall either into the area which is his own independent responsibility, perhaps the Roosevelt-Litvinov agreement falls in there—that sort of thing. Many of the military ones undoubtedly do. Or—and this is a greater group—in that zone of twilight where he has authority when Congress doesn't act. After all, the entire deployment of American troops across the world right now is, in my judgment, constitutional, although it is, in my judgment subject to change by Congress any minute that Congress wants to change it. That is all done largely by executive agreement. It is in the area where he has authority to act, the zone of twilight, if Congress doesn't.

Thirdly, they fall in an area of being authorized by Congress. Now, whether each one of the statutes authorizing executive agreements passes all the rules of the proper delegation of authority that I would impose or not, I cannot say. And finally, I am sure there are many executive agreements which pass no test at all, which are not within his own authority, which are not within the zone of twilight, and which quite conceivably commit the United States in terms and in ways that the President has absolutely no authority to commit them. And it may very well be that some of the Middle Eastern commitments by President Eisenhower were of that sort. And I can only say about that that it is ultimately a matter of prophecy and of wisdom and of assessment of the experience of the country, but my own judgment out of the experience of these past few years, is that only grief can come from the attempt to make and to fulfill and act upon substantial international commitments on the President's own authority. It won't work.

Mr. ROSTOW. I think the point which this discussion brings up is a point of the utmost importance for education and public opinion, a point to be approached with the utmost gravity, as we both have I hope today, and not in the spirit of polemics or debate. On the delegation point, the most important area of delegation really, I suppose, and the most dramatic or most important instances, are two areas where the Constitution and political history have made Congress extremely jealous of any presidential activity and where I think the President has absolutely no inherent power at all, that is to say, to set tariffs on the one hand and to make banking laws on the other. Now, the statutes which authorize the President to act in relation to tariff reduction, starting back a long way and dramatized of course in the statutes of 1934 as renewed as of 1962, do delegate and I think do wisely delegate, and do constitutionally delegate powers to the President which he can act under the surveillance of Congress and so on, but exercise and exercise properly. And so too the powers with regard to the IMF. But I think the problem is much deeper because what Alex says in the end is obviously true for the moment. It's just as true today as it was after Korea when the election was fought in 1952 on the slogan "No More Koreas," and within a few years commitments were being made and passed by the Senate reiterating and redoubling the Korea—giving out IOU's that meant more Koreas all over the world. Now why did that happen? And this is the problem to which I wish to return. It happened because the President and the relevant members of Congress confronting the world as it is every day through the cables, faced threats to interests which they could not in their judgment escape, despite their full knowledge as to the political consequences then of Korea and now of Vietnam. The answer, to my way of thinking, is not constitutional gadgets but a true and very serious national debate on what our foreign policy is for and how—if the answer comes out, as I believe it should—to protect our national interests. I think we are in the state of very deep confusion on the subject, and indeed in order to illuminate or deepen the confusion as the case may be, I have spent more of the last years writing a book on it.

Mr. McGEE. Mr. President, I want to highlight what each of these men said in the debate in order to make the one point that I should like to make in these brief remarks today.

Professor Bickel spelled out very expertly in his discourse how the L. B. J. decision of 1965 to intervene massively in Vietnam amounted to an all but explicit transfer of power to declare war from Congress, where the Constitution had lodged it, to the President, upon whom the framers explicitly refused to confer it.

He goes on to remind us that SEATO and Tonkin Gulf obliged us to act only in accordance with our constitutional processes. He argues about the constitutional adaptation that bids us to ask whether the change in the division of war making power between the President and Congress has been an element of beneficial growth.

He contends that we double the error of this war, which is a product in good part of the imbalance that by indifference or inadvertence we permitted to arise between the President and this body in part and Congress in general. He works over the differences, technically speaking, between Korea and Vietnam. Returning to SEATO, Professor Bickel contends that this must be interpreted totally within our prescribed constitutional processes as envisaged by the Founding Fathers.

Therefore, he concludes by acknowledging that we examine our own constitutional arrangements and that we do not abandon our responsibilities in the international horizons of the world and hopes to contribute to closing the gap that currently has brought us to this floor, debating this issue at this time.

In contrast to Professor Bickel's excellent presentation, Dr. Rostow reminds us all of the great originality and innovative qualities of the Constitution. He would stress in particular, as the most innovative, the great powers given to the President of the United States, because these Colonies, back in 1787, had freed themselves of the British because they distrusted and disliked and in fact detested administrative authority—the authority of the King, and later the authority of the Governor; yet because of the hard lessons the colonists learned during their so-called trial period of independence under the Articles of Confederation, they discovered to their chagrin, and learned to their sorrow, the price they paid for no administrative responsibility or authority. Thus the Founding Fathers wrote strong conditions into the Constitution describing the new role of the President of the United States. A congressional resolution to back the treaty, changes pejorative phrases, but little else. It is little more than a resolution, Mr. Rostow contends.

He goes on to remind us that we should not let the tragedy of Vietnam and the emotions of 1972 get us off the track of the real question of responsibility in making and carrying out foreign policy.

Mr. President, I ask unanimous consent to have printed in the RECORD a point-by-point summation of each of the positions of the two professors I have been referring to.

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

BICKEL-ROSTOW DEBATE ON PRESIDENTIAL WAR-MAKING POWERS

ROSTOW'S VIEWS

1. The written Constitution of 1787—and what is said in that Constitution about the war power, both of Congress and of the President—has to be read like any other legal document, in its matrix of history, purpose and function.

2. As Justice Jackson once pointed out, the President has some clear powers of his own and Congress has some which it alone can exercise. In between is a gray zone. On problems within that gray zone, the Nation speaks with a stronger voice when Congress and the President act together.

3. Mr. Bickel assures me that he recognizes that the U.S. did from the beginning use force in times of peace; that is, in times of peace so far as the categories of international law are concerned. The issue I disagree on is whether there has in fact been a change in the pattern of Constitutional usage in the division of war powers between Congress and the Presidency in the Twentieth Century and most especially in the year 1965.

4. A Congressional resolution to back the treaty changes pejorative phrases, but little else.

5. The experience of Korea, and the history of the fight over the Bricker Amendment, led President Eisenhower to develop the practice of getting Congressional resolutions in advance, approving the Presidential use of force in certain areas of tension, when in his judgment the use of force became desirable or necessary. Eisenhower used another form of participation on a large scale; namely, the practice of making treaties like SEATO, that would publicly commit the power and influence of the U.S. in advance of trouble to assure security and to deter aggression.

6. Many believe that what we have done in Vietnam was a mistake—that the commitment should never have been made, or once made, should never have been honored. We have a natural tendency to think that whatever we dislike very much must also be illegal, or, indeed, unconstitutional. Error in the use of Constitutional authority, if error was made, does not justify Constitutional change.

7. So now, those who believe that the tragedy of Vietnam was an error should not cripple the strong and independent Presidency which it was one of the great concerns of the Founding Fathers to establish.

8. It is just as true today as it was after Korea when the election was fought in 1952 on the slogan "No More Koreas," and within a few years commitments were being made and passed by the Senate reiterating and redoubling Korea—giving our IOU's that meant more Koreas all over the world. Now why did this happen? And this is the problem to which I wish to return. It happened because the President and relevant members of Congress confronting the world as it is every day through cables, faced threats to interests which they could not in their judgment escape despite their full knowledge as to the political consequences then of Korea and now of Vietnam.

9. The answer is not Constitutional gadgets but a true and very serious national debate on what our foreign policy is for and how—if the answer comes out—to protect our national interests. I think we are in a state of very deep confusion on the subject.

POINTS BY BICKEL

1. Johnson's decision of 1965 to intervene massively in Vietnam amounted to an all but explicit transfer of the power to declare war from Congress, where the Constitution lodged it, to the President on whom the framers explicitly refused to confer it.

2. SEATO and Tonkin Gulf resolution obliged us to act only in accordance with our own constitutional processes. President went beyond it.

3. Argument about constitutional adaptation bids us to ask whether the change in the division of war-making power between President and Congress has been an element of beneficial growth in the Constitution. Indochina not a beneficial outgrowth of constitutional adaptation.

4. Double error of this war is a product in good part of the imbalance we have permitted in the division of war-making power between the President and Congress. The Congress, whatever its faults, is institutionalized communication, access, participation. The President is a single official.

5. Difference between Korea and Vietnam. Korea fits into prior theory of reactive presidential power, which is justified on the basis of the genius of that institution. The President can respond expeditiously in an emergency in reaction to someone else's action. This did not typify Vietnam as it typified Korea.

6. SEATO told us we would act in conformance with our constitutional processes. It doesn't matter whether it is understood what the treaty obligation really signifies and what the action that Congress takes really means, because Congress is only adding its own assent to an action for which the responsibility rests elsewhere.

7. When NATO came to the Senate the issue was confronted and the Secretary of State solemnly told the Senate Foreign Relations Committee that we were not obliged to do anything except in accordance with constitutional practices.

8. Suggesting we recognize in re-examining our own constitutional arrangements that the impulse to distort them in order to serve the supposed imperatives of a world role was a wrong impulse and that even the distortion didn't help, as Vietnam proved. I do not urge abandoning international agreements, I urge a sensible and realistic understanding of them.

Mr. McGEE. Mr. President, this brings me to the one point I want to address myself to quickly here today, and that is that the Bickel-Rostow debate in the Yale Law Journal should be saying to us that what we really should be addressing ourselves to right now is the updating of our mechanisms for responsible policymaking in our system of representative government, that we should do so armed by all of the wisest judgments we can command, and start, in effect, from scratch in many ways, and begin all over again.

The world that our Founding Fathers drafted the Constitution to meet is not the world the Members of this body are compelled to face. What we should put together, by way of suggesting how the United States can meet its responsibilities in the world, may have little to do with what the men in Philadelphia in 1787 not only thought but even understood. I do not know. I think we have reason at least to call it into question and to raise our own doubts, because we serve ourselves ill if we proceed along the road of examining this question encumbered unnecessarily by the limited experiences of the past, or even by the irrelevancies of the past. I would think we would make a much more substantive contribution if we were not trying to patch up an old formula, not trying to paper over an old process that obviously does not meet the realities of 1972.

The illustration is conspicuous. The Founding Fathers provided a specific mechanism for declaring war, leaving the initiatives of the events which preceded a war clearly to the President. It provided that only the Congress finally could declare war.

But, Mr. President, that was in the days—the good old days, I suppose we might say—when wars were declared, when nations dared to consider war as an instrument of national policy. But many things have changed since the Founding Fathers met in Philadelphia in 1787. Many things have changed since GALE MCGEE started college some 40 years ago. World War II and its aftermath have completely changed many of the relevant forces, and conditions in the world, to which we should be addressing ourselves as we seek the wisest possible answer to this question.

I had occasion to say here yesterday that I think the Javits proposal, blended and combined with the constructive suggestions of the Senator from Virginia, comes closer than anything else we did in the committee to taking this out of the context of emotion, at least, and trying to make it realistic. But what it still falls short of is addressing itself to the really big questions.

What should a nation like the United States, with all its dedications, have in its mechanisms for policymaking that would be realistic in the world around us?

We are not asking that question here.

What we seem to be asking is, how can we patch up what the Founding Fathers did? How can we paper over what the Constitution says?

We should be inquiring into what the Constitution should say in 1972. I firmly believe in the Constitution as an instrument of continuing policy in this country. But we are not proposing that here. For that reason, I think that we are almost just spinning our wheels. We are addressing ourselves to "making do" if we can get by with it.

With all due respect, I think that is not enough. We have put off too long updating the Constitution. We have put off too long updating the mechanisms of a representative republic in the field of foreign policy.

We have joined ranks among those Members of the Senate who are here in this body right now, particularly the Senators from New York and Virginia, in quest of that updating.

My only real difference with my colleagues on the pending proposal is that it does not and cannot reflect a complete reexamination and restructuring of how we should do it. Without any disrespect to anyone, least of all to our esteemed predecessors in government and those at the Constitutional Convention in Philadelphia in 1787, I say that what we

owe the country now is an honest attempt at least to start with the assumption that we are starting from scratch, trying to measure what the times require, and how we can sort that out in a responsible procedure in foreign policymaking.

I wish I had the answer to that. I do not have it. But I do think that we had better well put ourselves to the task of coming up with the answers. I believe that the Senator from New York would be the first to agree that his proposal is not the ultimate answer yet.

I am saying while this is upon us, while our concern is focused, while the urgency reminds us that we have delayed it already too long, we should create a body of the finest minds available, a panel of those that would represent every conceivable interest and expertise in the policymaking process, that they would be commissioned to start as though nothing had happened in terms of the convention in Philadelphia in 1787, that nothing had happened in terms of any admonishment of the Founding Fathers, and that we should start such a panel thinking on their own, in the vacuum of the moment.

That would not give us our solution, but it would give us the ultimate, where if these great minds of today were writing a new Constitution for a brand new Republic of the United States of America in the real world of 135 sovereign national States and all that surrounds us, what would they come up with, what should we, in other words, aspire to by way of expectations.

What are the dimensions of that then? What would be our starting point here? It ought to be our beginning, where we then, as responsible representatives of the people, seek to take that dimension of policymaking, of the division of responsibility in a representative government, and take the next step, implement it in terms of the Constitution or traditions of the Nation and of the great wisdom of those who have preceded us both in administrative government and in this Chamber.

So, in summary, Mr. President, I am simply saying that we do believe that we are going at this in an inadequate way and that we are not going far enough. In some respects we are going at it a little backwards. We are going at it encumbered by the unrealities of the past rather than facing up to the harsh requisites of the present.

And we find ourselves, as the debate between these two esteemed professors suggests, not only embittered by Vietnam, but trying to prevent Vietnam. Vietnam has been the catalyst. Vietnam can teach us some things. However, like history itself, it ought not to be our hitching post.

What ought to be relevant here is what was long overdue, if there had never been a Vietnam, if there had never been a Korea, and that was modernizing and updating the process of decisionmaking.

Mr. President, I am preparing a proposal to submit to the Senate at an appropriate time in the course of the dialog and debate, to the effect that the President of the United States be commissioned to appoint at the highest level a group or panel to make this kind of a searching inquiry as to what a new nation conceived in 1972, should do with the awesome power of responsibility in the world that we have, and what kind of mechanism ought to be written into the theoretical constitution for that kind of a new republic.

Then, let us measure it, after that development, alongside those things that we have coming up through history. I think that only in that way can we separate the proper priorities, allow the proper weights, and sort through the beliefs that we ought to command in trying to resolve this heavy and difficult question of the war-making powers in a world that, in our time, never again can afford to declare a war for the convenience of the Founding Fathers who provided how it might be done if we would confine ourselves to their processes.

The times have changed the relevance of what they have said. No one is really measuring the role of the various branches of this Government and sorting it out in the light of the new events and the new and frightening responsibilities, that we did not seek but have, and trying to make it possible for our system to survive the impact of change, the erosions of irrelevancy, and the limitations of imprisonment for the very rich, but not quite relevant, past.

Mr. President, I yield the floor.

Mr. JAVITS. Mr. President, yesterday and today I have heard with the deepest interest the proposals of the Senator from Wyoming. I do not construe his interest to be in opposition to the bill. What he is really saying, as I understand it, is that he is questioning whether this is the optimum solution, and indeed he said that he believes that even I think it is not necessarily the optimum solution.

Mr. President, I wish to set the record straight on that. I believe it is the best solution to our present problem. And if I did not believe that, I would not be here urging this case as strongly as I am. Nor would, I suspect, the 25 Senators who have joined with me in this matter, including the distinguished Senator from Virginia (Mr. SPONG), who has been so helpful and instrumental in the matter, the majority leader, the chairman of the Armed Services Committee, the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. TAFT), who will soon be speaking, and many other Senators.

Why do we feel as we do? I think that Senators who have expressed such interest in the matter ought to know. I think we feel as we do because we believe it is needed. We are planning on placing before the Senate this matter as a law and not as a constitutional amendment.

We have viewed what has been going on for the last few years and have asked what we have been doing for all of this time. People make various judgments.

We sought the judgment of the best minds and we elicited their opinions. I assure the Senate that the expression of views, he referred to, from Professors Bickel and Rostow did not come from the moon. They came because we urged them to get into this matter. I had a debate with the distinguished Professor Rostow on a national television show. Professor Bickel testified before us. I had occasion this morning to refer to part of his testimony. We heard from the outstanding experts on this measure. Now we are subjecting this matter to the greatest scrutiny on the floor of the Senate.

The confidence of the country is a very important thing, as we have seen with respect to the Vietnam war. We cannot discard the opinion of the public. The fact is that this war has torn our country apart. Many of us feel, and I feel deeply, that it has caused an erosion of the motivation of the American people that is heavily attributable to their feeling that we do not know how to run our affairs well enough to avoid Vietnams.

We cannot lay aside the Constitution. We can amend it, but that process, as we know, is not something that can be done soon in a matter of this kind and is hardly likely to occur. There is no need to amend the Constitution.

It permits exactly what we are trying to do, establishing the relationship and the procedure by law and implementing it through exercise of the "necessary and proper" clause with respect to the war-making powers.

The old declaration of war is gone. We have only had five declarations of war in our history. We have probably had 100 occasions in which the American forces have engaged in hostilities.

The question is: What do we substitute for this rather out-of-date mechanism. We have come up with what we consider to be a very satisfactory contemporary answer. A law can be changed. It is not fixed or permanent. It has exactly the qualities which I believe the Senator from Wyoming (Mr. MCGEE) wants. We come up with the best that we can at this time. It is subject to change if experience indicates it should be changed.

Why do we do this now? The reason we do it now is that we are engaged in many activities around the world which could lead to imminent hostilities. We are in a position of being on literally hundreds of bases and stations, every one of which poses a threat. We are engaged in very tense situations. We are still in a war in Vietnam. We are engaged in the air over Laos and Cambodia. We have forces in Thailand which are actively engaged in a hot war. There is no secret about that.

We have a tense situation in the Mediterranean; we have tense situations in eastern Europe. We are trying very hard to defuse those situations and work out detentes. We are involved in massive alliances: NATO, the Southeast Asia Treaty, the Rio Pact, the many bilateral treaties, and the United Nations Charter, for that is, after all, an alliance.

Those of us who sponsor this bill feel that the people should have some assurance that we will not repeat the mistakes of the past. That assurance should be given at the earliest moment. We believe that the assurance is contained in the measure before us. This is the best practical measure we have. It is a law; it is not a constitutional amendment.

We believe the confidence that can be inspired in the country by the stability provided by the war-making authority, through this legislation, is indispensable to the tranquility of America, having gone through the experience we have.

Mr. President, it is for those reasons we believe it is proper to have this bill before the Senate and it is necessary the Senate should act. Until we come along with a better solution at a later date there is nothing to prevent us from adopting this measure in lieu of what we have. Right now this seems the best solution.

Mr. McGEE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield to the Senator from Wyoming.

Mr. McGEE. I appreciate what the Senator from New York has had to say on this matter. I once more say to my colleagues that I think a most innovative approach to the immediacy of the problem has been undertaken by the Senator from New York, and this is by far the best of the recommendations that came up through the committee. No one knows better than I, unless it is my two colleagues, of all the hours and hours we have gone through, picking brains and in consulting the best people possible so that we might get the best thinking on this kind of proposal.

What I am saying to the Senate on this question is that the best minds are divided at the moment, partly because we have been seeking to get them to focus on how we can adjust the present system so that we can survive, so that we can apply a band aid to heal the wound.

My contention is that that is not enough and that we owe more to the country than to try to tape it up again; that it is clearly out of date; that the times may even now be numbering its relativity in terms of its operability, in terms of future crises.

I am mindful of the immediacy of the Senator's suggestion and what it is aimed at doing in establishing public confidence. But what we are doing is playing from Tuesday to next Tuesday and the following Tuesday, and a year from Tuesday, when we do that. It is important, I guess, to win those few months when the events of the world permit, but we are still ducking the question, and the basic question is modernizing our mechanism in this desperately important area.

We are trying to put it off again, hoping to come to grips with it once more when we have another crisis, when we will not have liked the way things turned out on the procedures indulged in at one level of government or another. That is what I am suggesting.

We are not doing what we should be doing in the ultimate on this question. The support that is clearly present for this approach is mixed in its motivations at the very least. Some of it is bitterness over Vietnam, and we do not want another Vietnam. It is put together to see that there will not be another Vietnam, but some historians will be the first to remind us there will not be another Vietnam; there will be another something else, circumstances change so substantially concerning a given crisis.

What we should be aiming at here is a procedure, a definition, a responsibility on how to go about that responsibility when we have a President, a legislative branch, and a judicial branch. Maybe we should have something that is entirely different, something that is not in the Constitution.

I do not know what that answer is and perhaps I would end up back in 1787. I am only saying this method of approach is ducking the question once more and it is to leave unanswered the questions we have a right to ask ourselves and to which we must insist on answers from the composite of the finest minds that can be asked to focus on it, and that is the difference in focus on the war powers resolution.

That is a difference in the Senator's approach and what he has had to say, and my approach and what I have to say. We hope to come out at the same place when we are through and to stand shoulder to shoulder in support of that, but I do not think we are permitting a chance to restructure, really to restructure how it might have been done by the Founding Fathers of 1972, faced by the world as they know it.

Until we try that and see then what we are compelled to do to make it realistically rational and responsible, we still fail our mission. It remains, as I have described it, another passage on an outdated vessel, instead of passage of a bill to meet the times. We should seriously be measuring how it basically might be restructured. If we come out with the conclusion that basically it should not be restructured, great, but I think we are shoving that in the closet by seeking to expedite the matter and trying to get at it with this measure.

I am not sure we are in as much jeopardy about a repeat performance as some of my colleagues feel, and understandably they feel that way.

I think the proceedings before the Committee on Foreign Relations, the measure, and the debate have served as an important warning for the moment, so we will keep our shirts on for another time around. I would be less anxious about a crisis next week or next month, and that entitles us, in the interest of the changing times to move a little more slowly on this and, I think, have a much larger measure applied to it.

I thank the Senator for yielding.

Mr. JAVITS. Mr. President, I conclude as follows: The words "ducking the issue" and "Tuesday to Tuesday or a year from now" are not my words, I believe it is we who are facing the issue. Ducking the issue is to appoint a commission to think about it.

We are offering a methodology. That is what the Senator asks for. We offer one, and a positive one, one that can work, one that has the additional advantage of being built into the present framework, so there is no question in the world that the next 5 years or 10 years could be taken up by consideration of a committee or any other group, to which the Senator could send the measure.

I might join him in proposing a commission, as a supplement, not as a substitute, to this measure. It is what should be the framework of government for the United States, including the power to make and declare war. That is fine with me, but I do not see where this changes one iota the situation of the country now in which Congress has for decades forgone its authority and in which that authority needs to be recaptured under a methodology which is consistent with the exigencies of modern times. We offer that as a composite of what the Senator asks for. We have here a methodology. We lay one on the table, one that has been thoroughly considered and debated. It has the advantage of being a law so that if there is any problem about it it can be changed easily and readily.

I believe that we are the ones who are facing the issue. We are not avoiding it. We are not withdrawing from it. There are many ways of killing a proposition. One way is to refer it to another committee. Another way is to appoint a commission to think about it.

The question is, Do we need action now, or is there a very long-range proposition that can await higher level deliberations that may well take years?

I deeply believe that we have now matured, after 2 years of deliberation, a concrete and definite methodology. It is a methodology which can work to give great reassurance to our people, and I think it is time to legislate it into effect.

I thank the Senator.

Mr. SPONG. Mr. President, the Senator from Wyoming has been very gracious, both on yesterday and today, in saying that what has been done by the Senator from New York and the Senator from Mississippi and the Senator from Missouri and other Senators, including myself, has been good, but not quite good enough. If I understand what the Senator from Wyoming has been saying, it is that perhaps we need a new Constitution.

I think it important to reaffirm throughout this debate that the proponents of this measure are in no way attempting to amend the U.S. Constitution indirectly. They are not seeking to take away from the President any powers with regard to the warmaking process that he presently possesses. They are not seeking to endow upon the Congress any powers that the Constitution from its beginning has not given to Congress.

What we are seeking, as the Senator from New York has pointed out, is a method. We are seeking to establish by law ground rules that will assure that in decisions involving the use of force and the making of war, the Congress will participate those decisions.

The Senator from Wyoming, both yesterday and today, placed, in my judgment, an undue emphasis upon the war in Southeast Asia as a cause for this legislation. That war is only one step in a series of historic events that have taken place over a quarter of a century and which suggest the need for this bill. Earlier this morning the Senator from Mississippi covered very well his own involvement in the debate at the time the Korean treaty was before this body. The Senator from Montana mentioned that we seek to avoid a recurrence of the Dominican Republic episode without congressional concurrence.

Thus, we do not seek to second-guess

decisions that have taken place in the past, but it is a historic fact that since the Korean war and since the sending of divisions to Europe as a part of the the NATO agreement, Congress has been bypassed in consultation on decisions that the Founding Fathers and the Constitution called upon them to decide.

Assuming that we await some commission or some constitutional convention in the future, the question is: Is the situation as it presently exists—where there is constitutional dilemma, in my opinion, over the war powers between Congress and the Executive—preferable to doing nothing? The answer is "No." The procedures suggested in this bill endeavor to set up the apparatus through which the intent of the Constitution can be complied with. If we need a new Constitution, or if a new approach leading to greater powers for the President or greater powers for the Congress is indicated, that will have to be taken care of in another way.

But after one-quarter of a century of continued involvement abroad without adequate congressional consultation, the time has come, I think, to set up rules which, hopefully, will lead to a sharing of responsibility for the very grave business of warmaking.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who seeks time?

Mr. TAFT. Mr. President, I want, at the outset, to commend the Senator from Virginia, the Senator from New York, and members of the Foreign Relations Committee for their long and arduous effort in connection with the legislation that appears before us; and I want to express my agreement with the sentiments just expressed by the Senator from Virginia and the Senator from New York to the effect that this basically is not a change in our Constitution, nor does it impinge, I believe, upon the constitutional powers of the President. Rather, it defines and it attempts, within the terms of the Constitution, to bring to the attention of the Executive and of the Nation the desirability—almost the inevitability—of bringing along, in the event of a commitment of our Armed Forces, the people of the United States.

It is not a matter of a difference of opinion or an argument or a struggle for power between the members of the legislative branch of government, under the Constitution, with the executive branch as to who does what or why or when. Rather, it is going back to the very safeguards that existed in the Constitution itself to bring into play, when an important decision of this kind is made, the people themselves, acting through the Congress of the United States.

With the changes in the technology of communication, and the immediate communication we have today with the broadcasting media, and with the daily newspapers covering these areas very, very fully, it is more important, I think, than it has ever been in the history of the United States to reassert the proposition that the people themselves shall take a part in the decision-making process.

The great tragedy of Vietnam, in many ways—whether the decisions were right or wrong—was that we became involved in a commitment when the people failed to recognize the nature of that commitment or some of the aspects of it. For that reason, I think it is most timely that now, as we phase out the Vietnam war, we take a look at the situation and that we in the Congress itself attempt to define more accurately what the participation of the people, through Congress, should be in this important aspect of national policy.

Mr. President, this debate is of a truly historic nature, owing its genesis to the very roots of our existence as a Nation. The ability of the British Crown to commit the American Colonies to war produced an inherent distrust of the executive branch as an institution. The framers of our Constitution granted Congress the power to declare war and charged the President with the responsibility for conducting hostilities once they had been lawfully commenced.

Despite that constitutional mandate there have been at least 165 instances during the history of this Nation when American Armed Forces have been committed abroad. On only five occasions, however, has war been declared by the United States, and as to one of those, the Mexican war, the declaration occurred after two battles had been fought and the Congress in 1848 adopted a resolution stating that the war was commenced "unnecessarily and unconstitutionally" by the President.

Apart from declared wars, the Congress has on several occasions, when American troops have been committed in other nations, adopted measures relating to the propriety of the President's action.

I ask unanimous consent that there be inserted in the RECORD at the conclusion of my remarks an exhibit listing the declared wars, other action taken by Congress relative to the commitment of troops, and the instances when American Armed Forces have been used in other nations.

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

(See exhibit 1.)

Mr. TAFT. Mr. President, this exhibit is a part of an excellent document entitled "Background Information on the Use of United States Armed Forces in Foreign Countries," prepared for the Subcommittee on National Security Policy and Scientific Developments of the Committee on Foreign Affairs, of which I was a member during the last session of the Congress.

In a letter to Herndon, Abraham Lincoln addressed himself to this critically important issue:

> Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such purpose, and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect. If today he should choose to say he thinks it necessary to invade Canada to prevent the British from invading us, how could you stop him? You may say to him, "I see no probability of the British invading us"; but he will say to you, "Be silent; I see it, if you don't."

In a 1916 Yale Law Review article, my grandfather, William Howard Taft, propounded the cast for strong executive power. In part he stated:

> When we come to the power of the President as Commander-in-Chief, it seems perfectly clear that Congress could not order battles to be fought on a certain plan, and could not direct parts of the army to be moved from one part of the country to another.

The issues had become more complex by 1951 when my father wrote a book entitled "A Foreign Policy for Americans." In chapter 2 of that volume, he urged more congressional involvement in military deployment, stating 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 was obtained.

In that same chapter he also stated:

> If in the great field of foreign policy the President has the arbitrary and unlimited powers he now claims, then there is an end to freedom in the United States not only in the foreign field but in the great realm of domestic activity which necessarily follows any foreign commitments. The area of freedom at home becomes very circumscribed indeed.

The concerns voiced then seem quite prophetic today. The last 20 years have witnessed a continued atrophy of the congressional war powers. At the same time, the Executive has taken an increasingly broad view of its prerogatives in this area. Under modern conditions, the irreversibility and the danger of Executive action without congressional authorization has accelerated to an unprecedented extent and therefore the concern for the problem is enormously enlarged.

This growing centralization of power in the Executive, accompanied as it has been by a similar centralization of domestic power in the Federal Government, has created a deep sense of frustration among the people who increasingly despair that they lack control over their own destinies. There is a demand for participatory democracy in foreign affairs as well as on the domestic scene. Just as means must be found to strengthen local governments in dealing with matters of domestic importance, so must we increase the participation of the elected representatives of the people in the foreign policy decisionmaking process, particularly as it applies to matters of war and peace. War is not only too important to be left to the generals, Americans abhor war to such an extent that it is too important to leave to the Executive alone.

It has long been recognized that there must be a close parallel of military and diplomatic frontiers. To these I would add the importance of the public opinion frontier. In my judgment it is important for foreign policy questions to be decided whenever possible in the limelight of public opinion. In a democratic nation the broadest public discussion of such issues, followed by definitive action by

the legislative and executive branches, produces the soundest basis for the determination of national policy. This is not to say that tactical decisions should be governed by public opinion. I am reminded in this context of the cartoon in the Saturday Review on March 13 of last year when an aide was shown saying to Napoleon:

Sir, a public opinion poll shows 17 percent of the public believe you should fight the Duke of Wellington at Nivelles; 29 percent believe you should fight him at Wavre; and 54 percent believe you should fight him at Waterloo.

Much of the pressure for increased congressional activity comes with reference to our involvement in Southeast Asia. This is understandable—the process by which we became involved in Southeast Asia is a classic illustration of Executive usurpation of power from a Congress not willing to exercise its war powers, or an Executive willing to call for it. And what has been the result? While committing hundreds of thousands of troops abroad without congressional authority, the previous administration stepped up spending on the domestic front. The guns-and-butter strategy produced a ruinous inflation which has caused substantial economic disruption at home and abroad and has resulted in the obsolescence and decay of many military programs and facilities vital to our national security. It would also seem to have generated a considerable degree of psychological and economic vulnerability. One can only hope that if the Congress could have participated in these great decisions—if it had only been fully aware and made the country fully aware of the open-ended nature of our commitment—the necessary restraint would have been exercised. Of course, Congress did appropriate funds for the war but there is a great difference between appropriating funds for troops already committed to battle, and deciding initially that such a commitment is proper.

As Congress moves to reassert its constitutional prerogatives, we must profit by—rather than be blinded by—our experience in Southeast Asia. We must divorce, if possible, our great constitutional debate from the frustrations which many feel concerning our involvement there. Rather, the debate should be in terms of restoring a needed balance to the constitutional relationships between two great branches of government. We must recognize that Congress has too often given an Executive a blank check because of personal confidence in the individual occupying the Presidency at that particular time—or because of a sympathy with the particular national interest which the Executive's action is designed to protect.

If Congress moves to assert its prerogatives, as I think it must, it should do so in an "institutional" manner—one that divorces itself from the particular administration in office or the particular national interest which may be at stake—and it is particularly important to remember that in legislating, as we are, of course, today, in the shadow of a national presidential election. If the Congress reasserts its prerogatives, it must be vigilant to exercise these prerogatives whether it is a Democratic or Republican who is President and whether it is the survival of Berlin, Israel, or Cambodia which is at stake.

And any such reassertion must be accompanied by a searching review of our national commitments and the particular national interests served thereby. We are experiencing a reaction in this country which has been termed a "neo-isolationism." I am hopeful that this might only turn into what I would term a "new skepticism"—where we would no longer feel a compulsion to intervene in every brush fire around the world.

President Nixon in his report to the Congress on February 25, 1971 stated at page 154 that:

It is essential that the United States maintain a military force sufficient to protect our interests and meet our commitments.

The unanswered question, however, is precisely what these interests are that would properly call for American military action in other nations.

With reference to the utilizataion of American military power we must decide precisely what American interests are involved in Southeast Asia, in the Middle East, in Europe, and in South America. That decision is intensely political in nature and as such requires the full and complete participation by the Congress. If the Congress is to have any role in the formulation of American foreign policy, it must have authority to participate in the determination of which interests are so vital to the American people that we must resort to the use of military force.

Mr. President, that is what the purpose of this legislation is, a purpose I believe it is well designed to accomplish.

EXHIBIT 1

MAJOR U.S. ARMED ACTIONS[1] OVERSEAS, WITH RELEVANT CONGRESSIONAL ACTION, 1789–1970

A. DECLARED WARS

1. *War of 1812.*—Congress declared war on Great Britain, June 17, 1812. Madison's review of grievances did not actually call for war, but Congress resolved the matter with a joint resolution declaring war.

2. *Mexican War, 1846.*—U.S. troops under General Zachary Taylor were ordered by President Polk to occupy the land between the Nueces and Rio Grande Rivers, territory also claimed by Mexico. This was done without any authorization from Congress. Mexican troops surprised and mauled an American unit, and Polk sent a message to Congress asking that it recognize the existence of hostilities. Congress responded by a resolution declaring that a state of war existed between the U.S. and Mexico.

There was opposition to the war from the beginning, which grew stronger with time. The House added a rider to a resolution honoring General Taylor on January 3, 1848, stating that the war was begun "unnecessarily and unconstitutionally" by the President.

3. *Spanish-American War, 1898.*—President McKinley at first merely requested Congress' permission to use military and naval forces to effect a cessation of hostilities between Spain and its rebellious possession, Cuba, and to establish a stable government in the latter. The Senate added a provision to this request recognizing the independence of Cuba. This provision was opposed by the President and deleted in the conference with the House. A resolution was passed giving the President discretionary authority to use military force to satisfy U.S. aims with respect to Spain and Cuba. Spain responded by declaring war on the U.S. In response, McKinley ordered Dewey to attack the Philippines. He then asked for a declaration of war, which Congress gave, stating that war had existed from the day Spain declared it against the U.S.

4. *World War I, 1917–1918.*—President Wilson asked Congress to recognize that the course of the German government amounted to war against the United States. Congress responded by a joint resolution declaring that a state of war existed between the Imperial German Government and the U.S. War was not declared against Austria-Hungary until December, 1917, eight months after the declaration against Germany.

5. *World War II.*—After the Japanese attack on Pearl Harbor on December 7, 1941, President Roosevelt went before Congress the next day, and asked for a declaration of war, dating from the time of the Pearl Harbor attack. Germany and Italy, who were allies of Japan, then declared war on the United States. On December 11, 1941, President Roosevelt asked that Congress recognize a state of war between the U.S. and Germany and the U.S. and Italy, a request to which Congress acceded the same day.[2]

B. OTHER ACTIONS

Armed action

Undeclared naval war with France, 1798–1800.—This was a limited war, fought essentially for the protection of American merchant ships which were being harassed by French naval vessels. This contest included some land actions, i.e., the capture by U.S. marines of a French privateer under the guns of the forts in the Dominican city of Puerto Plata.

Congressional action

Congress:

1. Created a Navy Department.
2. Voted appropriations for new warships.
3. Abrogated treaties and consular conventions with France.
4. Authorized the enlistment of a "provisional army" for the duration of the emergency.
5. Authorized seizure and bringing into port of armed French vessels which had been preying on American shipping. Did not authorize seizure of unarmed French vessels.[3]

Armed action

War with Tripoli, 1801–1805.—The so-called Barbary pirates exacted tribute from countries whose ships plied the Mediterranean. The European nations paid, finding this the easiest way. When Jefferson became President the Pasha of Tripoli, feeling tribute paid by U.S. was insufficient, declared war. Jefferson sent warships to the Mediterranean which, after several naval actions, succeeded in winning a treaty from Tripoli more favorable than any other nation had yet secured from her.[4] During this conflict a few U.S. marines were landed with U.S. Agent William Eaton, with a view to raising a force to free the crew of the *Philadelphia*. This expedition penetrated as far as Derna, on Tripoli's eastern frontier, and probably influenced the Pasha to make peace.

Congressional action

In 1802 Congress passed a law entitled "An Act for the Protection of the Commerce and Seamen of the United States, against the Tripolitan Cruisers." It authorized the President to protect commerce and seamen, to seize and make prizes of vessels belonging to Tripoli, and all other acts of precaution and hostility as in a state of war. This amounted to subsequent approval of Jefferson's actions, plus the authority which only Congress could grant: to take prizes and to give commissions to privateers. An act levying revenue duties to pay the cost of the naval operations was likewise approved.

Footnotes at end of article.

Armed action

Second Barbary War, 1815.—The Dey of the Algiers declared war against the U.S. Two U.S. naval squadrons were sent to the Mediterranean. Stephen Decatur, commander of one of the squadrons, dictated peace to Algiers, and then to Tunis and Tripoli, ending the Barbary blackmail as far as the U.S. was concerned. Within a year, European warships took action against the Barbary corsairs, and the payment of tribute ended entirely.

Congressional action

Congress authorized the expedition against Algiers. Specifically, it authorized the use of armed vessels, "as may be judged requisite by the President." The same legislation made it lawful to take prizes.

Armed action

Boxer Rebellion, 1900.—In 1900 a series of anti-foreign disorders erupted in China, fomented by a secret society known to Westerners as Boxers. This uprising was encouraged by elements within the Imperial Government, but it was not, strictly speaking, a war waged by that government. The high point of the rebellion came when the Boxers rampaged through Peking, and laid siege to the foreign legations there. An international force was organized to lift the siege, and a U.S. contingent of 2,500 men was sent by President McKinley to join this international force. These U.S. troops came from forces already mobilized for the Spanish-American War and the Philippine Insurrection. For many years thereafter the U.S. maintained a guard at Peking and other military forces at certain places on Chinese territory, pursuant to authority acquired from the Chinese.

Congressional action

None—Congress was not in session at the time. There was little protest when Congress did reconvene, however.

Armed action

Panama, 1903.[6]—U.S. warships in Central American waters were ordered to seize the Panama railroad, keep the Isthmus of Panama clear, and prevent Colombia from landing troops within 50 miles of the Isthmus if a revolution broke out. These orders were issued on November 2, 1903, and a revolution broke out in Panama on November 3, 1903. Troops from the *U.S.S. Nashville* prevented loyal Colombian troops from suppressing the revolt. On November 4 Panama declared its independence. The U.S. recognized the independence of Panama *de facto* on November 6, and *de jure* a week later.

Congressional action

No chance for Congress to act. Senate ratified the Hay-Bunau-Varilla Treaty on February 23, 1904.

Armed action

Armed hostilities with Mexico, 1914–1917.—1. During a time of revolutionary upheaval in Mexico there were at least two major armed actions by U.S. forces in Mexico. The first was the occupation of Vera Cruz in 1914, ostensibly for failure of the Mexicans to fire a 21 gun salute to the American flag. The salute had been demanded by Admiral Mayo, U.S. Navy, following the release by Mexico of an officer and nine sailors who had been arrested and paraded through the streets of Tampico after going ashore without the permission of Mexican authorities. President Wilson backed Admiral Mayo's demands, and ordered the North Atlantic battleship fleet to Tampico. Wilson's motive, essentially, was to force Huerta out as Mexican president, so that a constitutional government would come to power. Tampico was to be attacked, but Vera Cruz was made the objective when it was learned that a German ship was heading there with munitions for Huerta. There was a clash with Mexican naval cadets and soldiers resulting in some 400 casualties, mostly Mexican. Following the mediation of Argentina, Brazil, and Chile, U.S. troops were withdrawn from Mexico.

Congressional action

President Wilson requested authority to use the armed forces, two days before they were actually landed. Congress passed a joint resolution giving him such authority the day after.

Armed action

2. In October 1915, the U.S. recognized the Carranza government in Mexico. General "Pancho" Villa, whom the U.S. had briefly supported, revolted, hoping to capitalize on anti-American sentiment and embroil the U.S. in a war with Mexico. To this end his guerrilla forces held up a train carrying 17 American mining engineers in January, 1916, and shot all but one on the spot. The following March his forces raided the town of Columbus, New Mexico, killing 19 Americans, and burning the town. Public opinion in the United States demanded the punishment of Villa, and Wilson ordered a punitive expedition into Mexico, having first obtained the consent, however grudging, of the Carranza government. The U.S. forces never found Villa, but they did clash with Mexican government troops at two points, Carrizal and Parral. In the meantime, Villa raided Glen Springs, Texas. Mexico and the U.S. moved toward war, as Carranza demanded the withdrawal of American forces and Wilson called out the National Guard and incorporated it into the Army. But neither side really wanted war, and although no satisfactory settlement was reached, Wilson withdrew U.S. troops. The increasing possibility of American involvement in Europe probably contributed to his decision.

Congressional action

The use of armed forces was approved by the Senate, which passed a joint resolution offered by Sen. LaFollette. The use of armed force was declared to be for the sole purpose of punishing the outlaws who had raided Columbus. This resolution did not come up for a vote in the House, however.

Armed action

Expeditions to European Russia and Siberia, 1918–1920.—Following the Bolshevik Revolution, Allied expeditions were sent to Murmansk and Archangel, where they joined British and French troops in operations against Bolshevik troops. Wilson resisted allied pressure for large-scale anti-Communist intervention.

After the end of the war U.S. troops entered Siberia through Vladivostok as part of an allied force, chiefly Japanese, sent to safeguard military supplies and assist the Czechoslovak legion to escape from Soviet territory. U.S. forces reportedly participated in this expedition as much to keep an eye on Japanese plans as anything else. U.S. troops were withdrawn in 1920.

Congressional action

President Wilson was criticized in Congress for waging war in both North Russia and Siberia. Two resolutions were introduced in Congress to compel the withdrawal of U.S. troops from the Siberian venture, but both died in committee.

Armed action

Nicaragua. 1926–1933. The U.S. employed military occupation to end civil war and establish elections and regular government. President Coolidge undertook the occupation on his own responsibility. Henry L. Stimson was sent as the President's personal representative, and managed to work out an agreement accepted by contending Nicaraguan factions, except for General Sandino, one of the Liberal generals, and his followers. Sandino carried on guerrilla warfare against the Nicaraguan government and U.S. forces for the remainder of the occupation. At its height, over 5,000 sailors and marines were either in Nicaragua or in transit there.

Congressional action

Resolutions were introduced in Congress requesting immediate withdrawal of armed forces from Nicaragua. Hearing were held by the Foreign Relations Committee and the ensuing report, Senate Report 498, 70th Congress, defended retention of troops in Nicaragua until settlement worked out by Stimson could be carried out. This report expressed no opinion on the constitutionality of dispatching troops to Nicaragua in the first place. Mexico and the U.S. backed rival factions in the Nicaraguan dispute. This added to existing tensions between the U.S. and Mexico. This tension evoked a "sense of the Senate" resolution, introduced by Sen. Frazier of North Dakota, that the President not exercise his powers as Commander in Chief to send any of our armed forces into Mexico, or to mobilize troops on the Mexican border, or assemble fighting units of the navy in waters adjacent to Mexico, while Congress was not in session. If the President contemplated such action, the resolution directed him to call Congress into special session and explain his reasons for proposed military moves.

This resolution did not contest the President's powers as Commander in Chief, but it did represent an attempt to curb his initiative in bringing about situations that might become dangerous, or lead to armed clashes. It was not adopted, but public opinion grew increasingly opposed to intervention by U.S. troops in any foreign country. The policy of intervention in Latin America was ended during the 1930's, and the country attempted to insulate itself against involvement in foreign wars through the Neutrality Acts.

Armed action

China, 1927. In 1927, anti-foreign disorders, which had taken place repeatedly since 1911, reached a climax. There was fighting at Shanghai between Nationalist and anti-Nationalist forces, which led to the landing of 1,250 Marines, who joined an international force that reached 13,000 men. A naval guard had to be stationed at the American consulate in Nanking. A small contingent of sailors was landed at Hankow at the beginning of the year, and a tiny contingent of Marines in April. A U.S. and a British warship fired on Chinese soldiers to protect the escape of Americans and other foreigners from Nanking. By the end of 1927, the U.S. had 44 naval vessels in Chinese waters, and 5,670 men ashore. Other countries also sent considerable forces to the area. After U.S. signed an agreement with Nationalist China in 1928 which constituted recognition, U.S. troops were gradually withdrawn.

Congressional action

No specific action was taken by Congress with respect to the landing of troops. However a resolution calling for the end of America's special privileges in China won overwhelming approval in the House.

Armed action

Pre-War moves, 1939–41.—After the outbreak of World War II in Europe, the U.S. took a number of actions designed to safeguard its security and that of the Western Hemisphere and to aid the allied powers against Nazi Germany. Among these actions were the following: 1. Troops were sent to garrison air and naval bases obtained from Great Britain in exchange for overage destroyers. These bases were located in Newfoundland, Bermuda, St. Lucia, Jamaica, Antigua, Trinidad, British Guiana, and the Bahamas. 2. Greenland was placed under American control, and the U.S. was given permission to build bases there by agreement with the Danish Minister in Washington, an agreement disavowed by the captive Danish

Footnotes at end of article.

government. 3. The President ordered troops to occupy Dutch Guiana, under agreement with the Dutch government in exile. 4. Iceland was taken under U.S. protection for strategic reasons, after the British had indicated they could not longer garrison their base there, and after agreement had been secured from the Icelandic government. 5. The President ordered the navy to patrol the ship lanes to Europe. These patrols began to convoy lend-lease shipments as far as Iceland, where the British navy picked them up. Clashes with German U–boats resulted from this activity.

Congressional action

President Roosevelt did not seek specific congressional authorization for many of the actions he took to aid Britain and other nations fighting the Axis. However, despite fierce opposition, Congress passed the Lend-Lease Act. It also passed the first peacetime conscription law in U.S. history (which it renewed by a margin of one vote) and passed the bill permitting the arming of merchant ships. In addition, Congress repealed those sections of the Neutrality Act of 1939 which forbade trade with belligerants, established combat zones into which U.S. ships were not to sail, and prevented the arming of merchantmen. In short, President Roosevelt did not seek the authorization of Congress for certain moves he made as Commander in Chief, but he did obtain what was in effect the endorsement of Congress for his policy of assisting one side in an international conflict.

Armed action

Korean Police Action, 1950–1953.—North Korean troops crossed the borders of South Korea on June 25, 1950. The UN Security Council, called into special session, denounced the invasion as an act of aggression, called for an immediate cease-fire, and requested member nations to render every assistance to see that its resolution was enforced. On June 27, President Truman announced that he had ordered U.S. air and sea forces to give the Korean government troops cover and support; that he had ordered the 7th Fleet to prevent any attack on Formosa as well as to prevent any Chinese Nationalist sea or air operations against the Chinese mainland. Later that day the Security Council adopted a resolution calling upon the members of the UN to furnish such assistance to the Republic of Korea as might be necessary to restore international peace and security in the area. In response to this resolution, President Truman ordered ground forces to Korea to repel the North Korean attack. Since the Korean action was undertaken under UN sponsorship, other countries also sent contingents, but that of the U.S. was by far the largest.

Congressional action

A few members of both houses voiced criticism that the President had usurped Congress' power to declare war. Resolutions were introduced in 1951 to declare war against North Korea and Communist China, and also for an orderly withdrawal of U.S. forces. None of these resolutions came to a vote.

If Congress did not formally accept, neither did it as a whole contest the contention of the Executive that it acted in response to the call of the UN Security Council. The State Department, in its memorandum defending the authority of the President to repel the attack in Korea, pointed to the debates on the UN Charter in which it was asserted that by becoming a party thereto, the U.S. would be obligated by commitments the organization would undertake, including commitments to international policing, and that it would be within the power of the Executive to see that these agreements were carried out. The Senate had approved the UN Charter, and there was some feeling, particularly at the outbreak of the Korean conflict, that it had therefore authorized, at least implicitly and in a general way, actions that might be taken under it. Furthermore the entire Congress had passed the UN Participation Act.

Armed action

Landing of troops in Lebanon, 1958.—Lebanon has always preserved a delicate internal balance between Christians and Moslems. This was threatened by certain Moslems, reportedly encouraged by President Nasser of the UAR. When a pro-Nasser coup took place in Iraq in July of 1958, the President of Lebanon sent an urgent plea for assistance to President Eisenhower, saying that his country was threatened both by internal rebellion and "indirect aggression." President Eisenhower responded by sending 5,000 marines to Beirut to protect American lives and help the Lebanese maintain their independence. This force was gradually increased to 14,000 soldiers and marines, who occupied strategic positions throughout the country.

After the matter had been taken to the UN, and the General Assembly had passed a resolution calling on member states to respect one another's integrity and refrain from interfering in one another's internal affairs, and also requesting that arrangements be made for the withdrawal of troops, the situation stabilized somewhat. U.S. troops were then gradually withdrawn on a schedule worked out with Lebanese authorities.

Congressional action

The "Eisenhower Doctrine," a joint resolution, had been passed by Congress in 1957 authorizing the President to use U.S. armed forces to assist any nation in the Middle East requesting help against Communist aggression. President Eisenhower stressed the provocative nature of Soviet and Cairo broadcasts in justifying the landing of troops.

Armed action

Deployment of troops, Thailand, 1961–1970.—In 1961 a detachment of 259 Marines was sent to Thailand to set up a helicopter maintenance facility for ferrying supplies to anti-Communist forces in Laos, when the military situation in that country began to deteriorate. In 1962, when anti-Communists fled across the Mekong into Thai territory, and it appeared that Pathet Lao might move into Thailand, U.S. forces numbering 5,000 men were sent into Northeast Thailand to guard against that possibility. The UK, Australia, and New Zealand also sent in small units, in a show of SEATO solidarity. As the threat receded, the U.S. and other troops were gradually withdrawn. The building of U.S. air bases in Thailand began around 1964, and by 1965 U.S. air strikes against the Vietcong and North Vietnam were being flown from Thailand. These air bases in Thailand are still maintained.

Congressional action

In 1969 Congress voted to prohibit a commitment of U.S. ground troops to Laos or Thailand, as an amendment to the defense appropriations bill.

Armed action

Intervention in the Dominican Republic, 1965.—On April 24, 1965, a revolt broke out in Santo Domingo, capital of the Dominican Republic. On April 28 President Johnson ordered a contingent of several hundred marines to land there, stating that Dominican "military authorities" had requested assistance, as they could no longer guarantee the safety of American citizens living in the Dominican Republic. The President stated that assistance would also be available to protect nationals of other countries as well.

The first U.S. contingent numbered only 400 men, but on May 2 the President announced he was sending in 200 more, with an additional 4,500 to follow at the earliest possible moment. Eventually U.S. forces in the Dominican Republic were to number 21,-500. Total personnel involved numbered over 30,000.

In announcing the dispatch of additional troops to the Dominican Republic, President Johnson cited increasing Communist control of the revolution, plus increasing needs for food and medical supplies, etc.

A peace commission from the Organization of American States succeeded in achieving a cease-fire among the contending Dominican groups, and on May 6, 1965, the OAS voted to create an Inter-American Peace force, to assist in restoring peace and order. As various elements of this Inter-American Peace Force began to arrive in the Dominican Republic, the U.S. withdrew a proportionate number of its forces. By the end of 1965 this Inter-American force numbered 9,400, with U.S. troops serving as part of that force. An Ad Hoc Commission of the OAS worked out a formula to restore constitutional government, and finally on September 3, 1965 a civilian, Hector Garcia Godoy, was inaugurated as provisional president. All U.S. troops were gradually withdrawn.

Congressional action

Congressional leadership was informed before the move was made into the Dominican Republic. Several resolutions were offered supporting the President's action in the Dominican Republic. The most prominent was H. Res. 560, endorsing the use of force individually or collectively by any country in the Western hemisphere to prevent a Communist takeover. It passed the House by a vote of 312–52.

Many members of Congress felt that the President had overestimated the extent of Communist penetration of the revolutionary movement. Others have charged that the intervention was motivated not so much by a desire to save lives and property as by a desire to prevent a Communist takeover in the country, a desire which, in their view, arose from an inaccurate assessment of the danger of such a takeover. Some argued that the U.S. should have consulted the OAS before it intervened in the Dominican Republic, something which it did not do.

Armed action

Vietnam, 1964-present. A U.S. Military Assistance Advisory Group had been in South Vietnam ever since the French relinquished authority there in 1954. In the late 1950's and early 1960's there was a marked step-up in guerrilla activities against the South Vietnamese government. This guerrilla activity was supported and directed from North Vietnam. U.S. military advisers were gradually increased, so that by 1962 there were 12,000 in the country, and this number was doubled by 1964.

U.S. policy was to work with the government of South Vietnam until the Vietcong insurgency would be suppressed, or until the forces of South Vietnam were capable of suppressing it. As time went on that date seemed farther and farther in the future.

It was against this background that the Gulf of Tonkin episode took place. On August 2, 1964, North Vietnamese torpedo boats were reported to have attacked the *U.S.S. Maddox* in international waters in the Gulf of Tonkin. The *Maddox* returned the fire, and aircraft from the *U.S. Ticonderoga* also fired on the torpedo boats. The *Maddox* was attacked again, along with the *C. Turner Joy* on August 4. On August 5, bases and an oil depot used as supporting facilities for the torpedo boats were bombed in retaliation, at President Johnson's orders.

On February 7, 1965, Communist forces attacked a U.S. ground installation. Seven U.S. soldiers were killed, and 109 wounded. President Johnson met with the National Security Council and congressional leaders, following which he announced that U.S. and South Vietnamese Air Forces had been directed to launch retaliatory attacks. These attacks were to develop into a program of bombing missions, while at the same time the U.S. began a buildup of its ground forces

in Vietnam. Except for occasional pauses, the bombing campaign continued until the partial halt announced on March 31, 1968, and the complete halt seven months later. Ground forces reached a peak of 535,000 before the program of gradual withdrawal was begun.

Since the Spring of 1965 the U.S. has indicated an interest in settling the war by negotiation. All attempts at bringing both sides together failed until President Johnson's speech of March 31, 1968, announcing the partial bombing halt, and requesting North Vietnam to begin talks at once. The only result of these talks to date has been the total cessation of the bombing, in return for permitting the Saigon government to participate in the talks. As a further concession, the National Liberation Front (Viet-Cong) was also permitted to participate.

Entrance into Cambodia, 1970.—On April 30, 1970, President Nixon announced that U.S. and South Vietnamese troops had crossed the border into Cambodia in order to wipe out Communist sanctuaries there. He said that all American forces would be withdrawn by the end of June.

Congressional action

Tonkin Gulf Resolution—On August 5, 1964, President Johnson asked Congress for a resolution "expressing the unity and determination of the United States in supporting freedom and protecting peace in Southeast Asia." He recommended a resolution which would express the support of Congress for all necessary action to protect U.S. armed forces and to assist nations covered by the SEATO Treaty. Two days later Congress voted the Tonkin Gulf Resolution, which the President signed into law on August 10. Its operative clauses read as follows: "That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attacks against the forces of the United States and to prevent further aggression. Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom." The resolution is to expire when the President determines that the peace and security of the area are reasonably assured, or earlier by concurrent resolution of Congress.

The Tonkin Gulf Resolution (PL 88-408), passed the Senate by a vote of 88-2 and the House by a vote of 416 to 0. Growing anti-war sentiment in the Congress was reflected in a number of resolutions, while members favoring the Executive's Vietnamese policy introduced resolutions of support. By the time of this writing the Senate had repealed the Tonkin Gulf Resolution. Some other measures presently in effect are as follows:

1. The so-called "national commitments" resolution (Sen. Res. 85, 91st Congress), a resolution expressing the sense of the Senate that a U.S. commitment to a foreign power "necessarily and exclusively results" from affirmative action taken by both legislative and executive branches, through a treaty, convention, or other legislative instrumentality.

2. Title IV of PL 90-5, a statement of congressional policy expressing its firm intention to provide all necessary support for the armed forces fighting in Vietnam; is support of the efforts by the President and others to prevent expansion of the war, and bring the conflict to an end through a negotiated settlement which will preserve the honor and protect the vital interest of the U.S. and allow the people of South Vietnam to determine their own affairs; and finally, declaring its support for the convening of a new conference to pursue the general principles of the Geneva Accords of 1954 and 1962, and to formulate plans to bring the conflict to an honorable end.

3. House Resolution 61, 91st Congress. Affirms support of the House for the efforts of the President to negotiate a just peace in Vietnam, expresses hope of U.S. people for peace, calls attention to numerous peaceful overtures made by the U.S., requests President to continue to press North Vietnam to abide by the Geneva Convention of 1949 in the treatment of war prisoners, calls for free elections in Vietnam and announces willingness to abide by results of such elections.

4. The Senate passed an amendment to the Foreign Military Sales Bill (H.R. 15628) cutting off all funds for U.S. forces in Cambodia after June 30, 1970, unless Congress authorizes their operations in that country. The amendment also denied U.S. funds for the support of the troops of other countries which might come to the assistance of Cambodia.

5. A number of measures are pending to cut off all funds for military operations in Vietnam by a specified date.

FOOTNOTES

[1] Armed action means the confrontation of U.S. forces with those of a foreign government or revolutionary faction, usually, but not always resulting in an actual clash.

[2] For an account of the move short of war by which the U.S. sought to aid Britain in its fight agains Germany, see part B of this Appendix.

[3] Two days before Congress authorized the seizure of French ships, a lone U.S. naval vessel had been sent out on patrol to protect U.S. coastal waters between Long Island and the Virginia Capes.

[4] Although favorable in comparative terms, the treaty still recognized the right of the pirates to obtain ransom for imprisoned Americans.

[5] In terms of the military forces involved, the Panama episode of 1903 cannot be classified as a major action. In terms of the stakes involved, and the long range impact, it seems appropriate to so classify it.

INSTANCES OF USE OF U.S. ARMED FORCES ABROAD, 1798-1970

1798-1800—Undeclared naval war with France.—This contest included land actions, such as that in the Dominican Republic, city of Puerto Plata, where marines captured a French privateer under the guns of the forts.

1801-05—Tripoli.—The First Barbary War, including the *George Washington* and *Philadelphia* affairs and the Eaton expedition, during which a few marines landed with United States Agent William Eaton to raise a force against Tripoli in an effort to free the crew of the *Philadelphia*. Tripoli declared war but not the United States.

1806—Mexico (Spanish territory).—Capt. Z. M. Pike, with a platoon of troops, invaded Spanish territory at the headwaters of the Rio Grande deliberately and on orders from Gen. James Wilkinson. He was made prisoner without resistance at a fort he constructed in present day Colorado, taken to Mexico, later released after seizure of his papers. There was a political purpose, still a mystery.

1806-10—Gulf of Mexico.—American gunboats operated from New Orleans against Spanish and French privateers, such as La Fitte, off the Mississippi Delta, chiefly under Capt. John Shaw and Master Commandant David Porter.

1810—West Florida (Spanish territory).—Gov. Claiborne of Louisiana, on orders of the President, occupied with troops territory in dispute east of Mississippi as far as the Pearl River, later the eastern boundary of Louisiana. He was authorized to seize as far east as the Perdido River. No armed clash.

1812—Amelia Island and other parts of east Florida, then under Spain.—Temporary possession was authorized by President Madison and by Congress, to prevent occupation by any other power; but possession was obtained by Gen. George Matthews in so irregular a manner that his measures were disavowed by the President.

1812-15—Great Britain.—War of 1812. Formally declared.

On authority given by Congress, General Wilkinson seized Mobile Bay in April with 600 soldiers. A small Spanish garrison gave way. Thus we advanced into disputed territory to the Perdido River, as projected in 1810. No fighting.

1813-14—Marquesas Islands.—Built a fort on island of Nukahiva to protect three prize ships which had been captured from the British.

1814—Spanish Florida.—Gen. Andrew Jackson took Pensacola and drove out the British with whom the United States was at war.

1814-25—Caribbean.—Engagements between pirates and American ships or squadrons took place repeatedly especially ashore and offshore about Cuba, Puerto Rico, Santo Domingo, and Yucatan. Three thousand pirate attacks on merchantmen were reported between 1815 and 1823. In 1822 Commodore James Biddle employed a squadron of two frigates, four sloops of war, two brigs, four schooners, and two gunboats in the West Indies.

1815—Algiers.—The Second Barbary War, declared by our enemies but not by the United States. Congress authorized an expedition. A large fleet under Decatur attacked Algiers and obtained indemnities.

1815—Tripoli.—After securing an agreement from Algiers, Decatur demonstrated with his squadron at Tunis and Tripoli, where he secured indemnities for offenses against us during the War of 1812.

1816—Spanish Florida.—United States forces destroyed Nicholls Fort, called also Negro Fort, which harbored raiders into United States Territory.

1816-18—Spanish Florida—First Seminole War.—The Seminole Indians, whose area was a resort for escaped slaves and border ruffians, were attacked by troops under Generals Jackson and Gaines and pursued into northern Florida. Spanish posts were attacked and occupied, British citizens executed. There was no declaration or congressional authorization but the Executive was sustained.

1817—Amelia Island (Spanish territory off Florida).—Under orders of President Monroe, United States forces landed and expelled a group of smugglers, adventurers, and freebooters.

1818—Oregon.—The U.S.S. *Ontario*, dispatched from Washington, landed at the Columbia River and in August took possession. Britain had conceded sovereignty but Russia and Spain asserted claims to the area.

1820-23—Africa.—Naval units raided the slave traffic pursuant to the 1819 act of Congress.

1822—Cuba.—United States naval forces suppressing piracy landed on the northwest coast of Cuba and burned a pirate station.

1823—Cuba.—Brief landings in pursuit of pirates occurred April 8 near Escondido; April 16 near Cayo Blanco; July 11 at Siquapa Bay; July 21 at Cape Cruz; and October 23 at Camrioca.

1824—Cuba.—In October the U.S.S. *Porpoise* landed bluejackets near Matanzas in pursuit of pirates. This was during the cruise authorized in 1822.

1824—Puerto Rico (Spanish territory).—Commodore David Porter with a landing

party attacked the town of Fajardo which had sheltered pirates and insulted American naval officers. He landed with 200 men in November and forced an apology.

1825—Cuba.—In March cooperating American and British forces landed at Sagua La Grande to capture pirates.

1817—Greece.—In October and November landing parties hunted pirates on the islands of Argenteire, Miconi, and Andross.

1831–32—Falkland Islands.—To investigate the capture of three American sealing vessels and to protect American interests.

1832—Sumatra.—February 6 to 9.—To punish natives of the town of Quallah Battoo for depredations on American shipping.

1833—Argentina.—October 31 to November 15.—A force was sent ashore at Buenos Aires to protect the interests of the United States and other countries during an insurrection.

1835–36—Peru—December 10, 1835 to January 24, 1836, and August 31 to December 2, 1836.—Marines protected American interests in Callao and Lima during an attempted revolution.

1836—Mexico.—General Gaines occupied Nacogdoches (Tex.), disputed territory from July to December during the Texan war for independence, under orders to cross the "imaginary boundary line" if an Indian outbreak threatened.

1838–39—Sumatra—December 24, 1838 to January 4, 1838.—To punish natives of the towns of Quallah Battoo and Muckie (Mukki) for depredations on American shipping.

1840—Fiji Islands—July.—To punish natives for attacking American exploring and surveying parties.

1841—Drummond Island, Kingsmill Group.—To avenge the murder of a seaman by the natives.

1841—Samoa—February 24.—To avenge the murder of an American seaman on Upolu Island.

1842—Mexico.—Commodore T. A. C. Jones, in command of a squadron long cruising off California, occupied Monterey, Calif., on October 19, believing war had come. He discovered peace, withdrew, and saluted. A similar incident occurred a week later at San Diego.

1843—Africa, November 29 to December 16.—Four United States vessels demonstrated and landed various parties (one of 200 marines and sailors) to discourage piracy and the slave trade along the Ivory coast, etc., and to punish attacks by the natives on American seamen and shipping.

1844—Mexico.—President Tyler deployed our forces to protect Texas against Mexico, pending Senate approval of a treaty of annexation. (Later rejected.) He defended his action against a Senate resolution of inquiry.

1846–48—Mexico, the Mexican War.—President Polk's occupation of disputed territory precipitated it. War formally declared.

1849—Smyrna.—In July a naval force gained release of an American seized by Austrian officials.

1851—Turkey.—After a massacre of foreigners (including Americans) at Jaffa in January, a demonstration by our Mediterranean Squadron was ordered along the Turkish (Levant) coast. Apparently no shots fired.

1851—Johanna Island (east of Africa), August.—To exact redress for the unlawful imprisonment of the captain of an American whaling brig.

1852–53—Argentina—February 3 to 12, 1852; September 17, 1852 to April (?) 1853.—Marines were landed and maintained in Buenos Aires to protect American interests during a revolution.

1853—Nicaragua—March 11 to 13.—To protect American lives and interests during political disturbances.

1853–54—Japan.—The "opening of Japan" and the Perry Expedition.

1853–54—Ryukyu and Bonin Islands.—Commodore Perry on three visits before going to Japan and while waiting for a reply from Japan made a naval demonstration, landing marines twice, and secured a coaling concession from the ruler of Naha on Okinawa. He also demonstrated in the Bonin Islands. All to secure facilities for commerce.

1854—China—April 4 to June 15 to 17.—To protect American interests in and near Shanghai during Chinese civil strife.

1854—Nicaragua—July 9 to 15.—San Juan del Norte (Greytown) was destroyed to avenge an insult to the American Minister to Nicaragua.

1855—China—May 19 to 21 (?).—To protect American interests in Shanghai. August 3 to 5 to fight pirates near Hong Kong.

1855—Fiji Islands—September 12 to November 4.—To seek reparations for depredations on Americans.

1855—Uruguay—November 25 to 29 or 30.—United States and European naval forces landed to protect American interests during an attempted revolution in Montevideo.

1856—Panama, Republic of New Grenada—September 19 to 22.—To protect American interests during an insurrection.

1856—China—October 22 to December 6.—To protect American interests at Canton during hostilities between the British and the Chinese; and to avenge an unprovoked assault upon an unarmed boat displaying the United States flag.

1857—Nicaragua—April to May, November to December.—To oppose William Walker's attempt to get control of the country. In May Commander C. H. Davis of the United States Navy, with some marines, received Walker's surrender and protected his men from the retaliation of native allies who had been fighting Walker. In November and December of the same year United States vessels *Saratoga, Wabash,* and *Fulton* opposed another attempt of William Walker on Nicaragua. Commodore Hiram Paulding's act of landing marines and compelling the removal of Walker to the United States was tacitly disavowed by Secretary of State Lewis Cass, and Paulding was forced into retirement.

1858—Uruguay—January 2 to 27.—Forces from 2 United States warships landed to protect American property during a revolution in Montevideo.

1858—Fiji Islands—October 6 to 16.—To chastise the natives for the murder of two American citizens.

1858–59—Turkey.—Display of naval force along the Levant at the request of the Secretary of State after massacre of Americans at Jaffa and mistreatment elsewhere "to remind the authorities (of Turkey) * * * of the power of the United States."

1859—Paraguay.—Congress authorized a naval squadron to seek redress for an attack on a naval vessel in the Parana River during 1855. Apologies were made after a large display of force.

1859—Mexico.—Two hundred United States soldiers crossed the Rio Grande in pursuit of the Mexican bandit Cortina.

1859—China—July 31 to August 2.—For the protection of American interests in Shanghai.

1860—Angola, Portuguese West Africa—March 1.—To protect American lives and property at Kissembo when the natives became troublesome.

1860—Colombia, Bay of Panama—September 27 to October 8.—To protect American interests during a revolution.

1863—Japan—July 16.—To redress an insult to the American flag—firing on an American vessel—at Shimonoseki.

1864—Japan—July 14 to August 3, approximately.—To protect the United States Minister to Japan when he visited Yedo to negotiate concerning some American claims against Japan, and to make his negotiations easier by impressing the Japanese with American power.

1864—Japan—September 4 to 14—Straits of Shimonoseki.—To compel Japan and the Prince of Nagato in particular to permit the Straits to be used by foreign shipping in accordance with treaties already signed.

1865—Panama—March 9 and 10.—To protect the lives and property of American residents during a resolution.

1866—Mexico.—To protect American residents, General Sedgwick and 100 men in November obtained surrender of Matamoras. After 3 days he was ordered by our Government to withdraw. His act was repudiated by the President.

1866—China—June 20 to July 7.—To punish an assault on the American consul at Newchwang; July 14, for consultation with authorities on shore; August 9, at Shanghai, to help extinguish a serious fire in the city.

1867—Island of Formosa—June 13.—To punish a horde of savages who were supposed to have murdered the crew of a wrecked American vessel.

1868—Japan (Osaka, Hiogo, Nagasaki, Yokohama, and Negata)—Mainly, February 4 to 8, April 4 to May 12, June 12 and 13,—To protect American interests during the civil war in Japan over the abolition of the Shogunate and the restoration of the Mikado.

1868—Uruguay—February 7 and 8, 19 to 26.—To protect foreign residents and the customhouse during an insurrection at Montevideo.

1868—Colombia—April 7—at Aspinwall.—To protect passengers and treasure in transit during the absence of local police or troops on the occasion of the death of the President of Colombia.

1870—Mexico, June 17 and 18.—To destroy the pirate ship *Forward,* which had been run aground about 40 miles up the Rio Tecapan.

1870—Hawaiian Islands—September 21.—To place the American flag at half mast upon the death of Queen Kalama, when the American consul at Honolulu would not assume responsibility for so doing.

1871—Korea—June 10 to 12.—To punish natives for depredations on Americans, particularly for murdering the crew of the *General Sherman* and burning the schooner, and for later firing on other American small boats taking soundings up the Salee River.

1873—Colombia (Bay of Panama)—May 7 to 22, September 23 to October 9.—To protect American interests during hostilities over possession of the government of the State of Panama.

1873—Mexico.—United States troops crossed the Mexican border repeatedly in pursuit of cattle and other thieves. There were some reciprocal pursuits by Mexican troops into our border territory. The cases were only technically invasions, if that, although Mexico protested constantly. Notable cases were at Remolina in May 1873 and at Las Cuevas in 1875. Washington orders often supported these excursions. Agreements between Mexico and the United States, the first in 1882, finally legitimized such raids. They continued intermittently, with minor disputes, until 1896.

1874—Hawaiian Islands—February 12 to 20.—To preserve order and protect American lives and interests during the coronation of a new king.

1876—Mexico—May 18.—To police the town of Matamoras temporarily while it was without other government.

1882—Egypt—July 14 to 18.—To protect American interests during warfare between British and Egyptians and looting of the city of Alexandria by Arabs.

1885—Panama (Colon)—January 18 and 19.—To guard the valuables in transit over the Panama Railroad, and the safes and vaults of the company during revolutionary activity. In March, April, and May in the

cities of Colon and Panama, to reestablish freedom of transit during revolutionary activity.

1888—Korea—June.—To protect American residents in Seoul during unsettled political conditions, when an outbreak of the populace was expected.

1888–89—Samoa—November 14, 1888 to March 20, 1889.—To protect American citizens and the consulate during a native civil war.

1888—Haiti—December 20.—To persuade the Haitian Government to give up an American steamer which had been seized on the charge of breach of blockade.

1889—Hawaiian Islands—July 30 and 31.—To protect American interests at Honolulu during a revolution.

1890—Argentina.—A naval party landed to protect our consulate and legation in Buenos Aires.

1891—Haiti.—To protect American lives and property on Navassa Island.

1891—Bering Sea—July 2 to October 5.—To stop seal poaching.

1891—Chile—August 28 to 30.—To protect the American consulate and the women and children who had taken refuge in it during a revolution in Valparaiso.

1893—Hawaii—January 16 to April 1.—Ostensibly to protect American lives and property; actually to promote a provisional government under Sanford B. Dole. This action was disavowed by the United States.

1894—Brazil—January.—To protect American commerce and shipping at Rio de Janeiro during a Brazilian civil war. No landing was attempted but there was a display of naval force.

1894—Nicaragua—July 6 to August 7.—To protect American interests at Bluefields following a revolution.

1894–96—Korea—July 24, 1894 to April 3, 1896.—To protect American lives and interests at Seoul during and following the Sino-Japanese War. A guard of marines was kept at the American legation most of the time until April 1896.

1894–95—China—Marines were stationed at Tientsin and penetrated to Peking for protection purposes during the Sino-Japanese War.

1894–95—China—Naval vessel beached and used as a fort at Newchwang for protection of American nationals.

1885—Colombia—March 8 to 9.—To protect American interests during an attack on the town of Bocas del Toro by a bandit chieftain.

1896—Nicaragua—May 2 to 4. To protect American interests in Corinto during political unrest.

1898—Nicaragua—February 7 and 8.—To protect American lives and property at San Juan del Sur.

1898—Spain.—The Spanish-American War. Fully declared.

1898–99—China—November 5, 1898, to March 15, 1899.—To provide a guard for the legation at Peking and the consulate at Tientsin during contest between the Dowager Empress and her son.

1899—Nicaragua.—To protect American interests at San Juan del Norte, February 22 to March 5, and at Bluefields a few weeks later in connection with the insurrection of Gen. Juan P. Reyes.

1899—Samoa—March 13 to May 15.—To protect American interests and to take part in a bloody contention over the succession to the throne.

1899–1901—Philippine Islands.—To protect American interests following the war with Spain, and to conquer the islands by defeating the Filipinos in their war for independence.

1900—China—May 24 to September 28.—To protect foreign lives during the Boxer rising, particularly at Peking. For many years after this experience a permanent legation guard was maintained in Peking, and was strengthened at times as trouble threatened. It was still there in 1934.

1901—Colombia (State of Panama)—November 20 to December 4.—To protect American property on the Isthmus and to keep transit lines open during serious revolutionary disturbances.

1902—Colombia—April 16 to 23.—To protect American lives and property at Bocas del Toro during a civil war.

1902—Colombia (State of Panama)—September 17 to November 18.—To place armed guards on all trains crossing the Isthmus and to keep the railroad line open.

1903—Honduras—March 23 to 30 or 31.—To protect the American consulate and the steamship wharf at Puerto Cortez during a period of revolutionary activity.

1903—Dominican Republic—March 30 to April 21.—To protect American interests in the city of Santo Domingo during a revolutionary outbreak.

1903—Syria—September 7 to 12.—To protect the American consulate in Beirut when a local Moslem uprising was feared.

1903–14—Panama.—To protect American interests and lives during and following the revolution for independence from Colombia over construction of the Isthmian Canal. With brief intermissions, United States Marines were stationed on the Isthmus from November 4, 1903, to January 21, 1914, to guard American interests.

1904—Dominican Republic—January 2 to February 11.—To protect American interests in Puerto Plata and Sosua and Santo Domingo City during revolutionary fighting.

1904–5—Korea—January 5, 1904, to November 11, 1905.—To guard the American Legation in Seoul.

1904—Tangier, Morocco.—"We want either Perdicaris alive or Raisuli dead." Demonstration by a squadron to force release of a kidnaped American. Marine guard landed to protect consul general.

1904—Panama—November 17 to 24.—To protect American lives and property at Ancon at the time of a threatened insurrection.

1904–5—Korea.—Marine guard sent to Seoul for protection during Russo-Japanese War.

1906–9—Cuba—September 1906 to January 23, 1909.—Intervention to restore order, protect foreigners, and establish a stable government after serious revolutionary activity.

1907—Honduras—March 18 to June 8.—To protect American interests during a war between Honduras and Nicaragua; troops were stationed for a few days or weeks in Trujillo, Ceiba, Puerto Cortez, San Pedro, Laguna, and Choloma.

1910—Nicaragua—February 22.—During a civil war, to get information of conditions at Corinto; May 19 to September 4, to protect American interests at Bluefields.

1911—Honduras—January 26 and some weeks thereafter.—To protect American lives and interests during a civil war in Honduras.

1911—China.—Approaching stages of the nationalist revolution. An ensign and 10 men in October tried to enter Wuchang to rescue missionaries but retired on being warned away.

A small landing force guarded American private property and consulate at Hankow in October.

A marine guard was established in November over the cable stations at Shanghai.

Landing forces were sent for protection to Nanking, Chinkiang, Taku and elsewhere.

1912—Honduras.—Small force landed to seizure by the Government of an American-owned railroad at Puerto Cortez. Forces withdrawn after the United States disapproved the action.

1912—Panama.—Troops, on request of both political parties, supervised elections outside the Canal Zone.

1912—Cuba.—June 5 to August 5.—To protect American interests on the Province of Oriente, and in Habana.

1912—China—August 24 to 26, on Kentucky Island, and August 26 to 30 at Camp Nicholson.—To protect Americans and American interests during revolutionary activity.

1912—Turkey—November 18 to December 3.—To guard the American legation at Constantinople during a Balkan War.

1912–25—Nicaragua—August to November 1912.—To protect American interests during an attempted revolution. A small force serving as a legation guard and as a promoter of peace and governmental stability, remained until August 5, 1925.

1912–41—China.—The disorders which began with the Kuomintang rebellion in 1912, which were redirected by the invasion of China by Japan and finally ended by war between Japan and the United States in 1941, led to demonstrations and landing parties for the protection of U.S. interests in China continuously and at many points from 1912 on to 1941. The guard at Peking and along the route to the sea was maintained until 1941. In 1927, the United States had 5,670 troops ashore in China and 44 naval vessels in its waters. In 1933 we had 3,027 armed men ashore. All this protective action was in general terms on treaties with China ranging from 1858 to 1901.

1913—Mexico—September 5 to 7.—A few marines landed at Ciaris Estero to aid in evacuating American citizens and others from the Yaqui Valley, made dangerous for foreigners by civil strife.

1914—Haiti—January 29 to February 9, February 20 to 21, October 19.—To protect American nationals in a time of dangerous unrest.

1914—Dominican Republic—June and July.—During a revolutionary movement, United States naval forces by gunfire stopped the bombardment of Puerto Plata, and by threat of force maintained Santo Domingo City as a neutral zone.

1914–17—Mexico.—The undeclared Mexican hostilities following the *Dolphin* affair and Villa's raids included capture of Vera Cruz and later Pershing's expedition into northern Mexico.

1915–34—Haiti—July 28, 1915, to August 15, 1934.—To maintain order during a period of chronic and threatened insurrection.

1916–24—Dominican Republic—May 1916 to September 1924.—To maintain order during a period of chronic and threatened insurrection.

1917–18.—World War I. Fully declared.

1917–22—Cuba.—To protect American interests during an insurrection and subsequent unsettled conditions. Most of the United States armed forces left Cuba by August 1919, but two companies remained at Camaguey until February 1922.

1918–19—Mexico.—After withdrawal of the Pershing expedition, our troops entered Mexico in pursuit of bandits at least three times in 1918 and six in 1919. In August 1918 American and Mexican troops fought at Nogales.

1918–20—Panama.—For police duty according to treaty stipulations, at Chiriqui, during election disturbances and subsequent unrest.

1918–20—Soviet Russia.—Marines were landed at and near Vladivostok in June and July to protect the American consulate and other points in the fighting between the Bolsheviki troops and the Czech Army which had traversed Siberia from the western front. A joint proclamation of emergency government and neutrality was issued by the American, Japanese, British, French, and Czech commanders in July and our party remained until late August.

In August the project expanded. Then 7,000 men were landed in Vladivostok and remained until January 1920, as part of an allied occupational force.

In September 1918, 5,000 American troops joined the allied intervention force at Archangel, suffered 500 casualties and remained until June 1919.

A handful of marines took part earlier in a British landing on the Murman coast (near Norway) but only incidentally.

All these operations were to offset effects of the Bolsheviki revolution in Russia and were partly supported by Czarist or Kerensky elements. No war was declared. Bolsheviki elements participated at times with us but Soviet Russia still claims damages.

1919—Honduras—September 8 to 12.—A landing force was sent ashore to maintain order in a neutral zone during an attempted revolution.

1920–22—Russia (Siberia)—February 16, 1920, to November 19, 1922.—A marine guard to protect the United States radio station and property on Russian Island, Bay of Vladivostok.

1920—China—March 14.—A landing force was sent ashore for a few hours to protect lives during a disturbance at Kiukiang.

1920—Guatemala—April 9 to 27.—To protect the American Legation and other American interests, such as the cable station, during a period of fighting between Unionists and the Government of Guatemala.

1921—Panama-Costa Rica.—American naval squadrons demonstrated in April on both sides of the Isthmus to prevent war between the two countries over a boundary dispute.

1922—Turkey—September and October.—A landing force was sent ashore with consent of both Greek and Turkish authorities, to protect American lives and property when the Turkish Nationalists entered Smyrna.

1924—Honduras—February 28 to March 31, September 10 to 15.—To protect American lives and interests during election hostilities.

1924—China—September.—Marines were landed to protect American and other foreigners in Shanghai during Chinese factional hostilities.

1925—China—January 15 to August 29.—Fighting of Chinese factions accompanied by riots and demonstrations in Shanghai necessitated landing American forces to protect lives and property in the International Settlement.

1925—Honduras—April 19 to 21.—To protect foreigners at La Ceiba during a political upheaval.

1925—Panama—October 12 to 23.—Strikes and rent riots led to the landing of about 600 American troops to keep order and protect American interests.

1926–33—Nicaragua—May 7 to June 5, 1926; August 27, 1926, to January 3, 1933.—The coup d'etat of General Chamorro aroused revolutionary activities leading to the landing of American marines to protect the interests of the United States. United States forces came and went, but seem not to have left the country entirely until January 3, 1933. Their work included activity against the outlaw leader Sandino in 1928.

1926—China—August and September.—The Nationalist attack on Hankow necessitated the landing of American naval forces to protect American citizens. A small guard was maintained at the consulate general even after September 16, when the rest of the forces were withdrawn. Likewise, when Nationalist forces captured Kiukiang, naval forces were landed for the protection of foreigners November 4 to 6.

1927—China — February. — Fighting at Shanghai caused American naval forces and marines to be increased there. In March a naval guard was stationed at the American consulate at Nanking after Nationalist forces captured the city. American and British destroyers later used shell fire to protect Americans and other foreigners. "Following this incident additional forces of marines and naval vessels were ordered to China and stationed in the vicinity of Shanghai and Tientsin."

1933—Cuba.—During a revolution against President Gerardo Mechado naval forces demonstrated but no landing was made.

1940—Newfoundland, Bermuda, St. Lucia, Bahamas, Jamaica, Antiguo, Trinidad, and British Guiana.—Troops were sent to guard air and naval bases obtained by negotiation with Great Britain. These were sometimes called lend-lease bases.

1941—Greenland.—Taken under protection of the United States in April.

1941—Netherlands (Dutch Guiana).—In November the President ordered American troops to occupy Dutch Guiana but by agreement with the Netherlands government in exile, Brazil cooperated to protect aluminum ore supply from the bauxite mines in Surinam.

1941—Iceland.—Taken under the protection of the United States, with consent of its Government, for strategic reasons.

1941—Germany.—Sometime in the spring the President ordered the Navy to patrol ship lanes to Europe. By July our warships were convoying and by September were attacking German submarines. There was no authorization of Congress or declaration of war. In November, the Neutrality Act was partly repealed to protect military aid to Britain, Russia, etc.

1941–45—Germany, Italy, Japan, etc.—World War II. Fully declared.

1950–1953.—U.S. responded to North Korean invasion of South Korea by going to its assistance, pursuant to United Nations Security Council resolutions. Congressional authorization was not sought.

1958. Marines were landed in Lebanon at the invitation of its government to help protect against threatened insurrection supported from the outside.

1962.—Cuba.—President Kennedy instituted a "quarantine" on the shipment of offensive missiles to Cuba from the Soviet Union. He also warned the Soviet Union that the launching of any missile from Cuba against any nation in the Western Hemisphere would bring about U.S. nuclear retaliation on the Soviet Union. A negotiated settlement was achieved in a few days.

1962–70.—Laos.—From October 1962 until the present, the United States has played a role of military support in Laos.

1964–1970.—War in Vietnam.—U.S. military advisers had been in South Vietnam for a decade, and their numbers had been increased as military position of Saigon government became weaker. After the attacks on U.S. destroyers in the Tonkin Gulf, President Johnson asked for a resolution expressing U.S. determination to support freedom and protect peace in Southeast Asia. Congress responded with the Tonkin Gulf Resolutions, expressing support for "all necessary measures" the President might take to repel armed attack against U.S. forces and prevent further aggression. Following this resolution, and following a Communist attack on a U.S. installation in central Vietnam, the U.S. escalated its participation in the war.

1965.—Dominican Republic.—Intervention to protect lives and property during a Dominican revolt. More troops were sent as the U.S. feared the revolutionary forces were coming increasingly under Communist control.

1970.—Cambodia.—U.S. troops were ordered into Cambodia to clean out Communist sanctuaries from which Viet Cong and North Vietnamese can attack U.S. and South Vietnamese forces in Vietnam as stated by the President. The object of this attack, which lasted from April 30 to June 30, was to ensure the continuing safe withdrawal of American forecs from South Vietnam and to assist the program of Vietnamization.

Mr. SPONG. Mr. President, I commend the Senator from Ohio, as I know the Senator from New York will also. He introduced a resolution on war powers, he testified before the Committee on Foreign Relations, and he is a cosponsor of S. 2956.

His statement here this morning reflects very well statements made by his father in this body over 20 years ago on the occasion of the entry into the war in Korea and on the occasion of the decision to send troops to Europe. What he has said here today is consistent with his father's views. Those of us who are working on this legislation have been pleased to have his help and to have his statement today as a part of the RECORD of this debate.

Mr. JAVITS. Mr. President, I am especially grateful to the Senator from Ohio for joining with us in this matter, and for his point of view as just expressed, his typical insight, and his particularization and specificity in thought.

The Senator from Ohio started off with a somewhat different approach and introduced his own resolution, which is a very interesting and important one. With the decisiveness quite typical of him, he then entered into this one and will give it the same conviction and the same support which caused him to come forward with his own important first suggestion

I think it is fair to say that the basic thrust of the Taft resolution on the same subject is contained in the legislation now before the Senate. I am pleased that he feels that this is in part his own handiwork, because that is true. I hope very much that he will continue, as the issue develops, to give us the benefit of his thinking.

As Senator SPONG has justly said, this is a great family tradition which Senator TAFT brings to the floor of the Senate, one of the most important and one of the most respected in our Nation. I am thoroughly mindful of the added weight which his support gives to this legislation.

I thank the Senator from Ohio very much for his extremely helpful contribution and especially for the intellectual integrity which he has brought to our joint enterprise.

Mr. TAFT. I thank the Senator from New York and the Senator from Virginia.

I should like to comment briefly on one other area, one specific area covered in my original resolution, and I believe also covered in the proposed legislation.

As a member of the House Foreign Affairs Committee for a period of years, I became particularly concerned at times with the seeming lack of participation of the House in some of the policymaking decisions in the foreign affairs area, except insofar as they related merely to the appropriation and authorization of money.

In that regard, my proposed legislation specifically eliminated the requirement of advance approval of treaty obligations. We have had some discussions on the question of whether treaty obligations of the United States are self-executing, and the preferred opinion seems to be that they are not self-executing; so that we do have a prior authorization required under the terms of the proposed legislation, on pages 8 and 9 of the resolution, that I think does not

differ materially from the prior requirement I have indicated.

I also note that in the requirements and the specific comment with reference to a treaty, the authorization that would be required for the use of the Armed Forces would indeed have to pass the House as well as the Senate.

I bring that up with particular reference to a point I made originally in my opening statement, that I think the public opinion of the country is really what we are talking about. It is not just a matter of what the Senate, as one of the legislative arms of the Government, might think or what the House might think. It is really a voice for the people themselves that we are talking about and the importance of these decisions that are referred back and reasserted on the part of the legislative prerogative.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. JAVITS. It always has been, so far as I am concerned and so far as Senator STENNIS, Senator EAGLETON, and Senator SPONG, who have collaborated closely, are concerned. We have had that very clearly in mind. We have made that one of the big points as to why we wrote the legislation as we did, because we want to join both Houses of Congress. That is essential to us. The Senator has put his finger on the precise point. Senator STENNIS emphasized that this morning.

The fact is that if we are going to get into war, there is a point beyond which an incident becomes war. This was something we developed yesterday in the long colloquy with the Senator from Alabama (Mr. ALLEN), when he was making the strong point that the President has to be able to react. We said that we are not inhibiting him, that we want him to react. But at a given point, reaction becomes war; it changes its character; and it is at that point that Congress has to come in—and we mean Congress—and that is one of the reasons why we have fought so hard for this legislation, because we do not want to have this concept of exclusivity. When the Senate ratifies a treaty, that is it. So far as war is concerned, that is the business of the people, and we have to bring in the best we can, in the people's concurrence.

Mr. TAFT. I thank the Senator for his remarks. I certainly concur in the statement he has made.

Mr. SPONG. Mr. President, yesterday the very able Senator from Missouri, who is one of the principal sponsors of the proposed legislation, delivered his opening statement.

The Senator from Missouri has appeared before the Committee on Foreign Relations on two occasions to give that committee the benefit of his views on the various proposals before it dealing with the war powers. He has worked very closely with the Senator from New York in formulating the collective effort that the committee was able to report to the floor. But beyond that, the Senator from Missouri has authored a very timely law review article entitled "Congress and the War Powers," which has just been published by the Law Review of the University of Missouri. It is a very thorough and very timely treatise on the important subject presently before the Senate, and I ask unanimous consent that this fine article be printed at this point in the RECORD.

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

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CONGRESS AND THE WAR POWERS

(By Hon. THOMAS F. EAGLETON) *

On almost every issue, our current national soul-searching leads us back to one crucial question whose answer is increasingly in doubt: Can the institutions created almost 200 years ago to govern a rural and agricultural nation meet the need of an urban, twentieth-century, technological society?

Much of the turmoil and questioning has sprung from our Vietnam experience. Even today, as we poke through the historical debris of the Vietnam era, it is difficult to identify why, and by what authority, the decisions were made which so deeply committed us in Southeast Asia. And the most significant question for the future to emerge from our Vietnam era is this: Who decides when and where America goes to war?

The President claims inherent rights as Commander-in-Chief. Congress claims that the Executive has usurped its war-making authority. Although it has the means to reclaim its authority, Congress has failed to act. In the past, both Legislature and Executive have been unwilling to have a showdown on this delicate issue in times of peace, and unable to in times of war. Yet this debate goes to the very heart of our system of government. It raises basic questions that must be answered. Will checks and balances still work in a hair-trigger nuclear age? Have we given up the benefits of collective judgment out of necessity or out of neglect? What follows is an effort to set forth the present state of the question and to argue that an orderly balance of power in war-making matters can and must be restored.

I. THE CONSTITUTION AND ITS UNDERLYING PRINCIPLES

During the debate on Indochina, the 91st Congress saw an unprecedented outpouring of commentary on the meaning of the Constitution and the thinking of the men who wrote it. Learned articles have appeared in many of our law reviews.[1] Law books were searched for both ancient and modern judicial opinions.[2] Treatises of recognized constitutional scholars were read and reread, and members of Congress [3] renewed their own acquaintance with the writings of Hamilton, Madison, Jay and Jefferson [4]—all in an attempt to understand the directives of the Constitution on the way we go to war. But to comprehend these directives some 183 years after they were written, it is necessary first to distill the principles on which the Constitution rests.

It is clear that the men who wrote the Constitution were influenced not only by the writing of theoreticians like Locke and Montesquieu, but also by the governmental practices and procedures which were followed or, in some instances, merely preached, in England. They noted on numerous occasions that many of their ideas had been derived "from the nation from whom the inhabitants of these states have in general sprung." [5]

In formulating a Constitution to create a central government of enormous but not unlimited powers, our Founding Fathers therefore worked from certain basic premises. First, since all of them were familiar with the autocratic powers which had been exercised over the colonies by the King of England, the Founding Fathers were reluctant to grant too much authority to the Chief Executive. They did not want this country's President to possess a variety of powers in the absence of any collective judgment. But neither did they want him completely stripped of discretion, at the mercy of other branches of the central government. So they limited his discretionary powers within rather narrow guidelines subject to legislative check lest the wisdom of a single man—or lack thereof—carry this country too far down a selected path.

Second, as a corollary to this concern, the Founding Fathers believed that the legislature should possess the widest range of authority delegated to the central government. A bicameral Congress composed of diverse individuals would reach its decisions through a process of deliberation and thus provide a collective judgment. It was not without forethought that Hamilton conceded "the superior weight and influence of the legislative body in a free government . . . ." [6] The framers of the Constitution rested their primary hopes for thoughtful policymaking on Congress, with its most cumbersome and therefore deliberative decision-making process. Congress received not only the longest list of powers, but also the residuary 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." [7]

Third, the framers of the Constitution were aware that, by giving specific and residual powers to the Congress while providing the President with a somewhat undefined charter, they had created a system of concurrent authority. They did not doubt that in so doing they had sowed the seeds for possible conflict. It was assumed that if this conflict occurred, compromise should be sought at all costs. However, if inter-institutional negotiations proved fruitless, it was likewise clear that overriding control would remain with the Congress. It was Hamilton—the chief architect of executive branch power—who wrote:

"The legislature is still free to perform its duties, according to its own sense of them; though the executive, in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decisions." [8]

A Congress moving to reverse the policies of a President should step carefully, but step it could. Collective decision-making—under the Constitution—was to be given more weight than one man's judgment. Antecedent presidential action could be overruled by the collective will of the legislature.

II. APPLICATION OF BASIC PRINCIPLES TO THE WAR-MAKING POWER

Obviously, the consequences of applying these underlying principles appear throughout the Constitution. But nowhere are they more evident than in the treatment given to the war-making powers. The framers of the Constitution directed a great deal of time and attention to the process by which this country should engage in hostilities. While most issues are dealt with by the Constitution in one reference, the question of waging war and raising military forces is treated throughout that document:

Article I, section 3 gives the Congress power to "declare war," grant "Letters of Marque," order "Reprisals," "raise and support Armies" (but for no longer than two years at a time), "provide and maintain a Navy," make rules which regulate and govern the military forces, and provide for organizing the militia and calling it up so that insurrections can be suppressed and invasions repelled.

Article I, section 10 forbids the States—absent congressional consent—from keeping military forces in time of peace or from en-

Footnotes at end of article.

gaging "in War, unless actually invaded, or in such imminent danger as will not admit delay."

Article II, section 2 makes the President "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."

Article IV, section 4 provides that the central government shall guarantee "a Republican Form of Government" to every state and "shall protect each of them against invasion."

These provisions were not designed to provide definitive answers to all questions regarding the use of American troops or the appropriate responses to acts of war or hostility by foreign nations. Rather, they were structured so that the Congress, the Chief Executive, and the States might understand how they were to mesh their roles in protecting this Nation from external harm.

In short, the Constitution attempted to assure that the awesome consequences of war did not flow through chance or mistake. The Founding Fathers set basic ground rules to control what they euphemistically referred to as "the Dog of War." [9] The ground rules themselves were relatively simple.

First, the framers drew a crucial distinction between offensive and defensive hostilities. If the United States were attacked, the President would act to repel the attack. Congress could provide the President with a small standing Army and Navy to fulfill his functions as defender of the nation's integrity—although in the early years of our nation such a course was admittedly frowned upon. The states could maintain militia and Congress could establish procedures under which the President might nationalize them rapidly to meet foreign attacks.

Second, Congress was to decide whether defensive action was to be supplemented or replaced by offensive action. The time lost in this process was considered less important than the necessity that the nation's elected representatives express their collective judgment. Thus, the Congress was to sanction in advance whatever actions were taken, whether simple reprisals, complex military operations or all-out war.

Third, the President's only role in the war-making process was to direct operations. That Congress was to play no part in day-to-day tactics was made clear by the draftsmen of the Constitution who changed the term "make war"—which might imply the idea of Congress conducting hostilities, to "declare war"—which carried the connotation of congressional initiation but presidential direction.[10]

The exact role of the President as Commander-in-Chief was clarified both by the delegates to the Constitutional Convention and by the authors of *The Federalist*. The records make clear the delegates' surprise when the possibility of giving the President power to make decisions which might result in offensive military action was raised at the Constitutional Convention. One delegate commented that he "never expected to hear in a republic a motion to empower the Executive alone to declare war." [11] This statement simply reflected the sentiment that centralized decision-making on matters of consequence was to be avoided. As Hamilton noted in a slightly different context:

"The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States." [12]

Clearly, the title "Commander-in-Chief" did not carry with it war-initiating powers and, in the words of *The Federalist, No. 69*, to be Commander-in-Chief "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." [13]

While the President's role as policy-maker on questions of war was minimized, he was in turn granted far greater authority in day-to-day military affairs once hostilities had been commenced. As Hamilton stated:

"The direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength, forms a usual and essential part in the definition of the executive authority." [14]

Fourth, commencement of hostilities was not intended to end congressional responsibility. For although Congress was not to be involved in making particular tactical decisions, it still was to play an important role in policymaking. A change from defensive to offensive action would need legislative approval. Decisions involving major changes in tactics—changes which might bring new opponents into a war, for example—also would constitute an appropriate subject for congressional concern.

That Congress could authorize less than total war was recognized by all three branches of the federal government early in our history. The early application of the Constitution's provisions dealing with war-making and the use of American military forces takes on special significance since most of the decisions and writings were the product of men who had either participated in drafting the Constitution or were intimately familiar with the context of its provisions.

In 1798, due to a number of French actions against American shipping, the United States became embroiled in its first trial by arms. Refusing to take independent action to initiate hostilities with the French, President John Adams waited until the Congress had passed a variety of statutes [15] suspending commercial relations with France and authorizing American vessels to seize certain French ships as well as other ships trading with the French. Thus, it was Congress which originated and limited our first combat response to hostile action by a foreign power.

This naval struggle with France produced, in turn, a series of judicial decisions by our Supreme Court which illuminated the principles underlying the Constitution's war-making provisions. In *Bas* v. *Tingy*, [16] the Court held that Congress could declare war in either of two ways—as a public or perfect war or as a limited or imperfect war. Justice Washington stated:

"If it be declared in form, it is called *solemn*, and is of the perfect kind; because one whole nation is at war with another whole nation, 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. In such a war all the members act under a general authority, and all the rights and consequences of war attach to their condition.

"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 because those who are authorized to commit hostilities, act under special authority, and can go no farther than to the extent of their commission. Still, however, it is *public war*, because it is an external contention by force between some of the members of the two nations, authorized by the legitimate powers. It is a war between the two nations though all the members are not authorized to commit hostilities such as in a solemn war, where the government restrain the general power." [17]

The limited naval actions of 1798, according to Justice Washington, constituted "war of the imperfect kind, . . . more properly called acts of hostility or reprisal" and were well within the constitutional power of Congress to declare.[18] Justice Chase, concurring, stated that Congress had taken the permissible route of declaring "hostilities . . . by certain persons in certain cases." He noted further that such deliberate action "only proves the circumspection and prudence of the legislature." [19]

Justice Patterson, concurring in this unanimous sanctioning of Congress's power to declare a war limited in time or scope or area, stated:

"As far as congress tolerated and authorized the war on our part, so far may we proceed in hostile operations . . . [It] is, therefore, a public war between the two nations qualified, on our part, in the manner prescribed by the constitutional organ of our country." [20]

As the *Bas* case should be interpreted as delineating the range of congressional powers to declare and circumscribe hostilities, *Talbot v. Seeman* [21] should be read as putting the Court on record as to which branch of government must bear the *sole* responsibility for taking this country into hostilities—whether limited or full scale. It was newly appointed Chief Justice John Marshall who wrote:

"The *whole powers* of war being, by the constitution of the United States, vested in congress, the *acts of that body can alone* 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." [22]

Three years later, in *Little v. Barreme*,[23] Marshall expounded further on the constitutional structuring of the war-making powers. In 1799 Congress had authorized the seizure of American ships bound *for* French ports. The *Little* case involved the seizure of a vessel which had been taken en route *from* a French port to the Danish Island of St. Thomas. In a short opinion, Marshall ruled that the seizure was in conflict with the congressional will and therefore illegal. The Chief Justice stressed that had Congress simply declared a naval war against the French, the President as "Commander-in-Chief of the armies and navies . . . might, without any special authority for that purpose" have had power to seize an American ship bound *from* France.[24] By sanctioning only the seizure of American ships *to* France, Congress had effectively pre-empted presidential discretion and "prescribed that the manner in which this law shall be carried into execution . . . exclude[s] a seizure of any vessel not bound to a French port." [25]

Thus, through these three early decisions, the Supreme Court set forth a solid underpinning for later interpretations of the war-making powers. To the Court, "[t]he whole powers" of entering into an offensive war were vested in the Congress "alone." [26] Included in these powers was authority to declare either general or narrowly limited hostilities. Presidential authority to take offensive action under the guise of the Commander-in-Chief power arose only after Congress had acted. Moreover, while the tactics of warfare might require that the President have certain discretionary powers, even these

Footnotes at end of article.

powers could be narrowed by precedent legislative action.[27]

This interpretation of the constitutionally prescribed dichotomy regarding the war-making powers was not held by the High Court alone. Such diverse personalities as Jefferson, Hamilton, Adams, and Madison all agreed that presidential authority to take offensive action as Commander-in-Chief existed only after Congress had acted, and even then these powers could be narrowed by precedent legislative action. But they realized that strong-willed Presidents, exercising their commander-in-chief powers, might show great reluctance in returning to Congress for further approval of new decisions once hostilities had begun. Powerful presidents would naturally interpret policy decisions to be tactical. The Founding Fathers responded to this dilemma by giving the Congress full power over the expenditure of funds for the military and insisting that such funds be reviewed at least every two years. As *The Federalist No. 24* noted:

"The whole power of raising armies was lodged in the *Legislature* . . . [subject to] an important qualification . . . which forbids the appropriation of money for the support of an army for any longer period than two years—a precaution which, upon a nearer view of it, will appear to be a great and real security against the keeping up of troops without evident necessity." [28]

The Founding Fathers hoped that Congress would not turn on the Commander-in-Chief once hostilities had begun and force him to alter his course. But they recalled that such action had been taken by English Parliaments against wilful kings [29] and, as unpleasant as the prospect was, they recognized that similar action might be required by Congresses faced with strong and militant Presidents.

III. THE PRINCIPLES IN PRACTICE

The set language of the Constitution and its underlying principles have been subjected to 183 years of practice. Unfortunately precedents have occurred which prevent a conclusive argument that these principles are still in effect.

In recent congressional debate much was made of the fact that at least 125 instances can be cited where Presidents have sent military units into hostilities at their own discretion.[30] Most of these actions have been relatively trivial, some having the *post facto* sanction of Congress: rescuing American citizens abroad in times of disorder or revolution, protecting commerce against piracy, and other miscellaneous policing operations such as the Boxer Rebellion in China. But some of these cases must be viewed as clear abuses of executive power. One such abuse occurred when President Polk sent American troops to occupy the disputed border territory with Mexico, provoking a clash in which 11 Americans were killed. However, Polk's action was not unnoticed and by a vote of 85–81 the House of Representatives denounced it as a war unnecessarily and unconstitutionally begun by the President of the United States.[31]

With a few exceptions, however, the constitutional separation of powers remained pretty much intact until the turn of the century. In the 20th century the President's war-making powers rapidly expanded with Teddy Roosevelt's intervention in Panama and Wilson's excursions into Mexico.

President Franklin Roosevelt took extraordinary powers upon himself as he prepared for World War II. First, he conveyed 50 destroyers to England, under his powers as Commander-in-Chief. Then, through convoys to England and a shoot-on-sight doctrine, Roosevelt in effect committed the United States to war with Germany.

During the war the President expanded his powers even further when opposing certain measures of the Emergency Price Control Act as inflationary. He threatened the Congress bluntly when he declared:

"In the event that the Congress should fail to act, and act adequately, I shall accept the responsibility, and I will act. At the same time that fair prices are stabilized, wages can and will be stabilized also. This I will do."

"The President has the powers, under the Constitution and under Congressional acts, to take measures necessary to avert a disaster which would interfere with the winning of the war. . . .

"When the war is won, the powers under which I act automatically revert to the people—to whom they belong." [32]

If a President can put us into war and then successfully claim unlimited presidential power in wartime it could easily provide a precedent for the destruction of our constitutional government.

At the end of World War II public opinion strongly favored collective security—a concert of great powers enforcing peace by joint action against any future Hitler through the Charter of the United Nations. But Congress by no means relinquished its war power by consenting to ratify the United Nations Charter. Several weeks after the United Nations Charter became operative the United Nations Participations Act was passed by the Congress. Section 6 of that act empowered the President to negotiate a military agreement or agreements with the United Nations Security Council to make American forces available for United Nations' peace-keeping purposes. This was no blank check, however, for such agreements were "subject to the approval of Congress by appropriate Act or joint resolution." [33] The Participation Act also stated:

"Nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council . . . armed forces, facilities, or assistance in addition to the forces, facilities and assistance provided for in such special agreement or agreements." [34]

Only once have American armed forces been committed to full-scale combat on the basis of a decision made unilaterally by the President. That instance was Korea.

Although emergency conditions clearly existed after the North Korean invasion of South Korea, and the United Nations Security Council passed an "authorizing resolution" after United States air and naval forces were committed,[35] President Truman's action must be viewed as a sharp incursion into congressional war-initiating power. Congress never delegated power to the Security Council to commit American soldiers to hostilities under the United Nations Charter. Congressional leaders were informed "on the events and decisions of the past few days" but not asked to assent to those decisions.[36] However noble the motivation, this stands as a solitary case in our history, and it represents a precedent which must never happen again.

President Truman declared, through the *Department of State Bulletin*, that "[t]he President as Commander-in-Chief of the armed forces of the United States, has full control over the use thereof." [37] The *Bulletin* went on to claim a "traditional power of the President to use the armed forces of the United States without consulting Congress." [38] Obviously, this was a bold claim to "inherent" or "traditional" presidential power—which undermines the whole concept of constitutional government through a written Constitution.

Whereas President Eisenhower tended to acquiesce to the constitutional powers of Congress, John Kennedy tended to take the broadest of all possible views regarding presidential powers. On the eve of the Cuban crisis, President Kennedy sent to Congress a draft resolution stating that "the President of the United States is supported in his determination and *possesses all necessary authority*" to act.[39] According to the Chief Executive and Commander-in-Chief, this authority encompassed the use of the armed forces of the United States to prevent the Castro regime from "exporting its aggressive purposes" to any part of the hemisphere . . . and to prevent the creation or use of any "externally supported offensive military base in Cuba." [40]

Congress balked. Senator Richard Russell and others would not stand for such a resolution. In Russell's words, it was "a clear delegation of the Congressional power to declare war." [41] Senator Russell concluded:

"I feel very strongly it is preferable to say he was authorized (by Congress) instead of that he possesses all the necessary authority." [42]

In its final form, the resolution did not confer authority on the President, but rather served simply as a statement of national policy.[43]

IV. THE WAR IN INDOCHINA AND THE CONSTITUTIONAL QUESTIONS WHICH SURROUND IT

An account of this country's war-making efforts obviously cannot be complete without including the present hostilities in Indochina. No war in our history has troubled the nation more, and no war has posed more difficult constitutional questions.

United States' military involvement in Indochina dates back to 1955, when President Eisenhower established a military advisory group of approximately 350 persons in South Vietnam, although almost one billion dollars in aid had been accorded the French since 1950. By the time Eisenhower left office, the United States' military group had more than doubled. Under President Kennedy, the number of American military advisers in South Vietnam continued to grow steadily. At the time of President Kennedy's death in 1963, the American commitment to that country had grown to 18,000 men, and their functions had broadened. They trained South Vietnamese troops and coordinated their military activities as well. They accompanied local forces on forays and advised them how to fight the Viet Cong. While these various American quasi-military activities were never kept secret, neither were they put before Congress for its specific approval.

Congress did not really seem to mind this arguable incursion into its powers and, in fact, continued to appropriate monies to support these actions in Vietnam. After all, the conflict was not going too badly. It was not inordinately expensive, and, in line with the new Kennedy doctrine of "flexible response," it constituted our first experiment in limited war-making and in the training of foreign forces to participate in the worldwide struggle against international communism.

Unfortunately for military strategists, amateur counter-revolutionaries, and quiescent politicians, increasing communist activity and the coming 1964 presidential elections made Vietnam a front-page story. Then came the Gulf of Tonkin. In August 1964, American warships were allegedly attacked on two separate occasions by North Vietnamese patrol boats. After the second alleged attack, President Johnson ordered air strikes against North Vietnam's mainland—aimed at knocking out not only patrol boats, but also naval bases and petroleum storage depots as well. These were reprisals neither proportionate to, nor fully justified by, the attacks which were alleged to have occurred.[44] Again, Congress was not consulted before the response, and again Congress took very little note of this incursion into its constitutional powers.

On the following day, however, the President did present Congress with certain facts regarding the Tonkin Gulf incident. He asked both Houses for their complete support through passage of the Tonkin Gulf Resolution. Both Houses responded rapidly and passed this vaguely worded and ill-defined

Footnotes at end of article.

resolution in its original presidential form with only two dissenting votes—Senators Wayne Morse and Ernest Gruening.[45]

In perhaps his finest hour, Senator Morse attempted to persuade Congress that it must not grant the President this broad "predated declaraion of war." The resolution stated (in part):

"[T]he Congress approves and supports the determination of the President, as Commander in Chief, to *take all necessary* measures to repel any armed attack against the forces of the United States and to prevent further aggression.

"The United States regards as vital to its national interest and to world peace the maintenance of international *peace and security in southeast Asia.* Consonant with the Constitution and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, *as the President determines,* to take *all* necessary steps, including the use of armed force, to assist *any* member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

"This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured. . . ." [46]

Despite anguished protestations in retrospect, it seems clear that Congress knew what power it was delegating to the President at the time it passed the Tonkin Gulf Resolution. The record shows not only the warning of Senators Morse and Gruening, but also a debate containing the following colloquy between Senator Fulbright, Chairman of the Foreign Relations Committee and floor manager for the Resolution, and Senator Brewster:

"Mr. Brewster. I had the opportunity to see warfare not so very far from this area, and it was very mean. I would look with great dismay on a situation involving the landing of large land armies on the continent of Asia. So my question is whether there is anything in the resolution which would authorize or recommend or approve the landing of large American armies in Vietnam or in China.

"Mr. Fulbright. There is nothing in the resolution, as I read it, that contemplates it. I agree with the Senator that that is the last thing we would want to do. *However, the language of the resolution would not prevent it. It would authorize whatever the Commander in Chief feels is necessary. It does not restrain the Executive from doing it. Whether or not that should ever be done is a matter of wisdom under under the circumstances that exist at the particular time it is contemplated.* This kind of question should more properly be addressed to the Chairman of the Armed Services Committee. Speaking for my own committee, everyone I have heard has said that the last thing we want to do is to become involved in a land war in Asia; that our power is sea and air, and that this is what we hope will deter the Chinese Communists and the North Vietnamese from spreading the war. That is what is contemplated. The resolution does not prohibit that, or any other kind of activity." [47]

Later that day, Senator Fulbright and Senator John Sherman Cooper discussed the meaning of the Resolution:

"Mr. Cooper: *Then, looking ahead, if the President decided that it was necessary to use such force as could lead into war, we will give that authority by this resolution?*

"Mr. Fulbright: *That is the way I would interpret it.* If a situation later developed in which we thought the approval should be withdrawn, it could be withdrawn by concurrent resolution." [48]

Footnotes at end of article.

It seems certain that in 1964 no member of Congress thought that within a year American planes would be running daily bomb runs over North Vietnam, even though the "Pentagon Papers" indicate that plans had been drafted by the Executive,[49] or that thousands of American troops would be engaged in "search and destroy" missions in South Vietnam's Delta region or constructing American base camps throughout that country. Despite his contingency plans President Johnson probably had no idea that the limited military operation in South Vietnam would soon blossom into a 30 billion dollar-a-year war.

Faulty vision and political pressures cannot be permitted to minimize the legal significance of the Tonkin Gulf Resolution. In my judgment, the Tonkin Gulf Resolution—pared of its verbiage and placed in the context of its legislative history—was a broad congressional charter to the President to combat North Vietnamese forces anywhere in the SEATO area. It was an extremely broad delegation of authority in the area of foreign affairs but, as the Supreme Court noted in *Zemel v. Rusk,*[50] Congress has always been permitted to grant extensive powers in foreign affairs and to "paint with a brush broader than that it customarily wields in domestic areas." [51] Although the existence of the Tonkin Gulf Resolution did not make the war we have waged in South Vietnam any wiser or any more explicable, it did make it a *legitimate* war authorized by the Congress.

This authorization has been revoked by the 91st Congress [52]—in fact, the Senate repealed it twice.[53] The President agreed, signing the repeal into law. But the repeal of the Gulf of Tonkin Resolution has done nothing to change the course of the war or to reassert congressional authority over it. Indeed, by failing to substitute a new legislative authorization to either continue military action or force withdrawal, and by tacitly accepting the right of the Commander-in-Chief to act in any way he wishes, Congress has left the scope of its authority in even greater doubt than before.

In fact, however, neither President Johnson nor President Nixon has been willing to conduct war-making operations simply on the basis of the broad authority granted in the Tonkin Gulf Resolution. Lyndon Johnson thought the Tonkin Resolution was "desirable" but as he stated at a press conference on 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." [54]

In the 1966 memorandum, the State Department contended that the SEATO Treaty was self-executing—that the President could independently commit troops to defend any SEATO signatory or protocol state under attack from communist forces if he deemed such action advisable.[55] But the SEATO Treaty—like the NATO Treaty, and all of our other collective security agreements—states that the United States shall meet aggression against one of its allies "in accordance with its *constitutional processes.*" [56] Even if this caveat were not included in the Treaty, it would be incorporated implicitly. For the Senate—which is the only House of Congress that approves a treaty—can hardly by-pass the constitutional requirement that both Houses of Congress declare war.

Above and beyond the Tonkin Gulf Resolution or any treaty commitments, successive administrations have professed to find, as some of the predecessors have, inherent powers of the Commander-in-Chief which have been taken to authorize military action almost anywhere in the world. In the same 1966 memorandum quoted previously, the Department of State referred to the constitutional responsibility of the Commander-in-Chief to "repel sudden attacks." [57] The Department allowed that the "framers probably had in mind attacks upon the United States," but that now, in a world grown smaller, "[a]n attack on a country far from our shores can impinge directly on the nation's security." [58] Under these conditions, according to the Department's memorandum, "the Constitution leaves to the President the judgment to determine whether the circumstances of a particular armed attack are so urgent and the potential consequences so threatening to the security of the United States that he should act without formally consulting the Congress." [59]

V. THE STATE OF THE ISSUE TODAY

Recently, even more extended presidential powers have been discovered and proclaimed. On July 1, 1970, in an interview with Howard K. Smith, President Nixon seemed to extend the President's presumed authority to defend American security on a global basis even further—to winning a "just peace":

"Mr. Smith. What justification do you have for keeping troops there other than protecting the troops that are there fighting?

"The President. A very significant justification. It isn't just a case of seeing that the Americans are moved out in an orderly way. If that were the case we could move them out more quickly, but it is a case of moving American forces out in a way that we can at the same time win a just peace." [60]

When fighting broke out in Jordan on September 17, 1970, Congress was in session. Although United States' intervention was a very real possibility, the President did not seek congressional authorization to act. The State Department, in a letter to me, reaffirmed its broad view of the President's inherent constitutional powers which would cover United States' action in Jordan:

"As a general matter, the President must determine in a particular situation what action he believes necessary in behalf of the security interests of the United States and whether the pressure of events would permit him to take no action while the matter was submitted to Congress for its consideration." [61]

Somehow, in recent years, powers to ensure a "just peace" and unilaterally to define and protect "the security interests of the United States" wherever they may be threatened have been grafted to the constitutional authority of our Presidents as Commanders-in-Chief. If these claims are accepted, we also accept a major restructuring of the constitutional balance between Congress and the Executive, leaving Congress in the position of ratifying hostilities initiated unilaterally by the President or trying to stop them by cutting off funding, rather than making the precedent decision to authorize these hostilities.

In my view, both constitutional theory and the practical need for order at home and in the world require that these broad theories of unilateral presidential authority be rejected. At the very least, the revolutionary process by which the President has preempted Congress' constitutional duty to initiate war should be debated and either legitimated by constitutional change or rejected.

Some would argue that decades of congressional acquiescence plus Congress' poor performance during the Vietnam War constitute a persuasive case for *formally* restructuring the Constitution to give the President a broader, more unilateral war-making authority. I believe to the contrary that such a formal abdication of congressional authority should be opposed, as should further erosion of Congress' war-making role. The tragic presidential miscalculations on Vietnam—almost destroying that country while seriously dividing this one—are an even more compelling argument for returning to the principles of collective judgment and deliberation. We do live in a smaller, more dangerous and rapidly changing world. But these factors, rather than diminishing the value of col-

lective judgment, make it all the more important. While "declarations of war" may be anachronisms, the death, destruction, tragedy, and suffering of war remain ever-present realities. Congress can and must exercise collective judgment as to when and how we engage in hostilities.

VI. CONGRESSIONAL ACTION

Congress possesses the power to restore its role in the process of collective decision making on matters of war and peace, if only it possesses the will. As constitutional scholar Alexander Bickel has noted:

"The 'necessary-and-proper' clause of Article I of all the Constitution authorizes Congress, of course, to make "all laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . ." The reference is to the previously enumerated powers of Congress. But there is another portion of the necessary-and-proper clause, not so often cited, which is one of the greatest consequence when it comes to issues of foreign policy and of war and peace. *The clause also charges Congress to make all laws which shall be 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.*" [62]

In 1970, during the second session of the 91st Congress, the House passed a feeble Joint Resolution which expressed the sense of Congress than "whenever feasible," the President should seek appropriate congressional consultations before involving the Armed Forces of the United States in armed conflict, and should "continue such consultation periodically during such armed conflict." [63] This vaguely worded effort fell far short of clarifying the war-making powers of the Congress and the President. On the Senate side, no hearings were held on the House Resolution or on a slightly better bill introduced by Senator Javits of New York.[64] In general, debate in the Senate has only touched the periphery of the constitutional questions involved, concentrating instead on the Cooper-Church and McGovern-Hatfield amendments dealing specifically with the Indochina War.

In 1971, in the first session of the 92nd Congress, eleven "war powers" bills or resolutions were introduced in the House [65] and five in the Senate.[66] Senator Robert Taft of Ohio introduced a resolution [67] which, while vague as to the future delineation of congressional-Executive powers, was meritorious in its attempt to force Congress to face up to its responsibilities in Southeast Asia.

Senator Jacob Javits of New York, the first Senator to introduce "war powers" legislation and a leader in bringing the issue to the attention of Congress and the public, introduced a slightly improved version [68] of his original 1970 effort.

The Eagleton Resolution [69] was introduced on March 1, 1971. Senator John Stennis, Chairman of the Armed Services Committee, also introduced a resolution [70] along the general lines of the Eagleton proposal on May 11th and Senator Bentsen of Texas introduced essentially the Stennis Resolution in bill form on May 17th.[71]

Underlying all these efforts was the premise that more precise guidelines were necessary to restore the process of joint congressional and presidential decision-making before this country engages in hostilities abroad.[72] These efforts recognized that the President must have sufficient discretion to take emergency action to meet attacks on the United States and its forces and to rescue American civilians under seige abroad.

These measures represented different approaches. After months of meetings among Senator Javits, Senator Stennis and me, a compromise bill was agreed upon, which can best be understood against the background of the five original proposals.

The following table illustrates the areas of agreement and disagreement among the original Senate proposals:

MISSOURI LAW REVIEW

	Eagleton	Javits	Taft	Stennis, Bentsen
Instances where President can act without specific authorizing Congressional action by both Houses:				
Repel attack on the United States	Yes	Yes	Yes	Yes.
Prevent an imminent attack on the United States, etc.	No (admits further debate is necessary)	No	Yes	Yes.
Repel attack on U.S. troops	Yes, but limited to defensive action	Yes	Yes	Yes.
Protect U.S. citizens abroad	Yes, but with restrictions	Yes	Probably yes, but sec. 4 is unclear	Yes.
Protect U.S. property abroad	No	Yes	Probably no, but sec. 4 is unclear	No.
Under auspices of treaties	No	Yes, but requires affirmative Congressional action within 30 days.	Begs the question in pt. 1, sec. 2	Unclear.
Under national commitments	No	do	Probably yes, but sec. 4 is unclear	No.
Commit U.S. troops where imminent possibility of involvement in hostilities exists.	No	Yes, but not specific	Yes	No.
Commit U.S. advisors to accompany foreign troops in combat.	No	do	Yes	No.

The three most important areas of disagreement concerned the scope of the President's authority to commit troops to combat under "treaty commitments," to prevent an "imminent" nuclear attack and to deploy troops and advisors in situations where involvement in hostilities is a virtual certainty.

A. Treaties

All of our mutual defense treaties contain the caveat that each of the signators act "in accordance with their constitutional processes." [73] In this country, that means a collective decision must be reached by both Houses of Congress before United States' forces can be committed to trial by force, not by the President and the Senate through the use of the treaty power.

It seems clear that the President and the Senate, through the use of the treaty power, cannot legitimately "declare war." The concurrence of the House is required to authorize hostilities.[74] In fact, Madison noted that the possibility of giving the Senate alone the power to "declare war" was considered and rejected.[75]

Even if treaties could require the use of armed force, however, none of our treaties currently in force requires an automatic response. Our most strongly worded commitment, the North Atlantic Treaty, states:

"The parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them . . . will assist the Party or Parties so attacked by taking . . . such action as it deems necessary, including the use of armed force . . ." [76]

Under this language, the United States is not committed to an immediate or automatic response. As the Senate Foreign Relations Committee told the 81st Congress in its report on the NATO Treaty:

"Would the United States be obligated to react to an attack on Paris or Copenhagen in the same way it would react to an attack on New York City? In such an event does the treaty give the President the power to take any actions without specific Congressional authorization which he could not take in the absence of the treaty? The answer to both of these questions is "No." [77]

However, after re-reading murky presidential assertions on SEATO, it seems prudent rather than redundant to spell out that treaties do not authorize hostilities without further congressional action.

The Stennis and Bentsen proposals were unclear on this point. The Taft Resolution dealt with deployment. The Eagleton Resolution specifically stated:

"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.[78]

However, the Javits bill not only failed to spell this out but, if enacted by both Houses, would have served as a functional equivalent of a predated—although limited—declaration of war. Under it, the Executive could have unilaterally engaged the United States in hostilities for up to 30 days in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad-Tobago, Uruguay, Venezuela, Australia, France, New Zealand, Pakistan, the Philippines, Thailand, the United Kingdom, South Vietnam, Belgium, Canada, Denmark, Iceland, Italy, Luxembourg, the Netherlands, Portugal, Norway, Greece, Turkey, the Federal Republic of Germany, South Korea, Taiwan, and Japan—all treaty signatories with the United States.[79]

All of the Senate initiatives recognized the President's ability to fight a limited defensive war to protect American forces when they were legally stationed in a country with which the United States has a treaty commitment.

But what was at issue was whether the President should have unilateral authority to commit United States' troops to offensive hostilities under our far-reaching network of treaties. Three early Supreme Court decisions provide a solid underpinning for drawing the line between offensive and defensive war.[80]

B. Preemptive strikes

Should the President be empowered to strike first if he deems the very existence of this country to be threatened by "imminent" nuclear attack?

The concept of executive power to act preemptively is not new. In fact, the Articles of Confederation contained the first and only explicit grant of power for a pre-emptive strike:

"No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received cer-

Footnotes at end of article.

tain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted." [81]

However, a similar provision was omitted from the Constitution.

Justice Story again raised the possibility of executive pre-emptive powers when he stated: "the power to provide for repelling invasions includes the power to provide against the attempts and danger of invasion, as the necessary and proper means to effectuate the object. One of the best means to repel invasion is to provide the requisite force for action before the invader himself has reached the soil." [82]

In the nuclear world of 1972, the stakes are no longer isolated villages subject to attack by Indians. In a sane world dependent on the universal acceptance of mutual deterrence for its survival, a first strike should not be sanctioned. But no one can guarantee that sometime, someday, a demented world leader will not attempt an irrational nuclear attack on the United States. This remote possibility may be reason enough to justify an explicit grant of power to the President to act unilaterally and preemptively.

The Taft, Stennis and Bentsen efforts sanctioned unilateral presidential action to prevent an "imminent" nuclear attack.[83] The Eagleton and Javits proposals did not. Perhaps, as Congress attempts to clearly define the war powers of the executive and legislative branches, it should also recognize that, in the final analysis, all any resolution can expect to achieve is to hold a President legally and politically accountable for his actions. But the consequences of nuclear holocaust make the questions of political and legal responsibility moot.

C. When Congress must act

In what circumstances and at what point must the President come to Congress for authorization to conduct military hostilities? Should the continuance of a secret air war or the deployment of American troops to world hot spots, or the assignment of American "advisors" to foreign troops on combat missions require affirmative congressional authorization?

The Eagleton, Stennis and Bentsen proposals specified when affirmative congressional action was necessary.[84] The Javits and Taft Resolutions contained no such provisions. Obviously, hostilities include land, air, or naval action taken by the Armed Forces of the United States against other armed forces or the civilian population of any other nation. But the Eagleton, Stennis and Bentsen efforts were more specific. They included the deployment of American forces outside the United States under circumstances where an imminent involvement in combat activities was a reasonable possibility. They also included the assignment of United States' soldiers 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 from of combat activity" [85]

There is well-founded precedent for such limitations. In the absence of limiting congressional legislation, presidential power to move Armed Forces of the United States in international waters and to station them on territory of our allies has generally been accepted, except where such action could reasonably be expected to lead to hostilities. Only once has this principle been flagrantly abused. In 1846, after the annexation of Texas, President James Polk ordered American troops to enter the disputed territory between the Nueces and Rio Grande Rivers. Hostilities immediately broke out and Congress thereafter declared war against Mexico. However, some 18 months later, the House of Representatives concluded that the President had unconstitutionally begun the war and, in effect, Polk was justly censured.[86]

The Eagleton, Stennis and Bentsen proposals were based on the view that presidential power to move the Armed Forces of the United States did not, and should not, extend to placing American men in situations where combat is almost inevitable. Further, as Vietnam has illustrated, these three proposals recognize that military advisors to countries where combat activities are in progress or could be expected to commence shortly are becoming increasingly more dangerous in an era of "brush-fire" wars and guerrilla warfare.

VII. CONCLUSION

During 1971, war powers legislation moved forward. Hearings began on March 8, 1971 and continued until October 6, 1971. Twenty-four witnesses were heard; constitutional historians and lawyers, spokesmen for the executive and legislative branches and former administration officials.[87]

After the initial round of hearings, Senator Javits and I, in an effort to put forth the best proposal and gain the most congressional support, began to work on a compromise proposal. After months of talking, an understanding on a compromise bill was reached. Senator Stennis, a leading Southern conservative, was kept abreast of developments, and on December 6th—one day before the Senate Foreign Relations Committee was to meet in executive session to report a war power bill to the Senate—he agreed to co-sponsor the Javits-Eagleton compromise, along with Senator Spong of Virginia.

With only minor changes, the Committee reported out the Javits-Eagleton-Stennis-Spong bill states:

[A]uthority to introduce the Armed Forces of the United States in hostilities or in any such situation (where imminent involvement in hostilities is clearly indicated by the circumstances) shall not be inferred . . . from any treaty hereafter ratified unless such treaty is implemented by legislation specifically exempting the introduction of . . . such Armed Forces from compliance with the provisions of this Act. . . . 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. . . ."

"Pre-emptive strike:

"In the absence of a declaration of war by the Congress, 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, only—

"(1) 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;* . . .

"Necessity of prior congressional approval:

"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." [88]

This bill will be debated on the floor sometime during the life of the second session of the 92nd Congress. Passage of a strong war powers bill is important in practical terms because it will provide political guidelines by which future Congresses can decide how and when to go to war. Congress will be assured of being involved, as the Constitution mandates, in the life and death decisions which face a democracy on the brink of war. Just as importantly, such legislation would provide the "judicially discoverable and manageable standards," which many courts have been unable to discover or manage with regard to the legality and constitutionality of the Vietnam War.

A war powers bill will not serve as an absolute guarantee against the occurrence of non-authorized hostilities in the future. The Indochina War might have occurred even if the guidelines for war powers responsibility had been clearly defined. Any legislation can be violated by a Chief Executive who chooses to do so, regardless of how clear and precise its terms.

In addition, no resolution can force Congress to act responsibly. It is clear that presidential decisions shaped the course of the Indochina war and that an indifferent Congress provided little or no restraint on executive actions. Some politicians will continue to prefer unclear guidelines, especially in an area as crucial as deciding whether to send American sons to war; for scapegoats are often popular in politics and the assumption of responsibility often is not.

These are problems that exist with many of the institutional devices we have developed in an effort to make the government operate in an orderly fashion. Good faith cannot be legislated. But clear criteria can be set forth within which men of good faith can and will operate.[89]

FOOTNOTES

*United States Senator from Missouri; B.A., Amherst College 1950 (cum laude); LL.B., Harvard Law School 1953 (cum laude).

[1] *See, e.g.,* 116 CONG. REC. 8737 (daily ed. June 10, 1970) where Senator Church made reference to the article *Congress, the President, and the Power to Commit Forces to Combat,* 81 HARV. L. REV. 1771 (1968).

[2] *See, e.g.,* Bas v. Tingy, 4 U.S. (4 Dall.) 36 (1800); Berk v. Laird, 429 F.2d 302 (2d Cir. 1970).

[3] *See, e.g.,* the excellent analysis of Senator William Spong, *Can Balance Be Restored in the Constitutional War Powers of the President and Congress?,* 6 U. RICH. L. REV. 1 (1971).

[4] *E.g.,* THE FEDERALIST (A. Hamilton, J. Madison, J. Jay).

[5] THE FEDERALIST No. 26 at 214 (B. Wright ed. 1961) (A. Hamilton).

[6] THE FEDERALIST No. 73, at 470 (B. Wright ed. 1961) (A. Hamilton).

[7] U.S. CONST. art I, § 8.

[8] 7 WORKS OF ALEXANDER HAMILTON 83 (J. Hamilton ed. 1851).

[9] 15 THE PAPERS OF THOMAS JEFFERSON 397 (J. Boyd ed. 1955).

[10] J. MADISON, NOTES OF THE DEBATES IN THE FEDERAL CONVENTION OF 1787, at 475 (1966).

[11] 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 318 (rev. ed. 1937).

[12] THE FEDERALIST No. 75, at 477 (B. Wright ed. 1961) (A. Hamilton).

[13] THE FEDERALIST No. 69, at 446 (B. Wright ed. 1961) (A. Hamilton).

[14] THE FEDERALIST No. 74, at 473 (B. Wright ed. 1961) (A. Hamilton).

[15] Act of July 9, 1798, ch. 68, 1 Stat. 578; Act of May 28, 1798, ch. 48, 1 Stat. 561.

[16] 4 U.S. (4 Dall.) 37 (1800).

[17] *Id.* at 40 (emphasis added).

[18] *Id.*

[19] *Id.* at 43–45.

[20] *Id.* at 45–46.

[21] 5 U.S. (1 Cranch) 1 (1801).

[22] *Id.* at 28 (emphasis added).

[23] 6 U.S. (2 Cranch) 170 (1804).

[24] *Id.* at 177.

[25] *Id.* at 177–78.

[26] Talbot v. Seeman, 5 U.S. (1 Cranch) 1, 28 (1801).

[27] Little v. Barreme, 6 U.S. (2 Cranch) 170 (1804).

[28] THE FEDERALIST No. 24, at 204 (B. Wright ed. 1961) (A. Hamilton.)

[29] By 1789, in England, Parliament was the

dominant force in military affairs. In fact, it had been so since the early years of the seventeenth century; no kind had been able to wage a war without parliamentary consent since 1626. In that year, when Charles I tried to wage a war without parliamentary consent, Parliament voted him no money. The impossibility of continuing the war without parliamentary financing led Charles to sign the Petition of Right (1628) which declared it illegal to collect any taxes without parliamentary consent, thus ending forever the possibility of a king waging wars independent of parliamentary authorization.

[30] *See, e.g.*, 117 CONG. REC. 5640–46 (daily ed. April 26, 1971) (remarks of Senator Goldwater).

[31] CONG. GLOBE, 30th Cong., 1st Sess. 95 (1848).

[32] *See generally* E. CORWIN, THE PRESIDENT: OFFICE AND POWERS 304 (3d ed. 1948).

[33] United Nations Participation Act, 22 U. S.C. § 287(d) (1970).

[34] *Id.*

[35] *See* Hoyt, *The United States Reaction to the Korean Attack: A Study of the Principles of the United Nations Charter as a Factor in American Policy Making*, 55 AM. J. INT'L L. 45 (1961).

[36] President Truman ordered American air and sea forces to give Korean Government troops cover and support on June 26, 1950. The President sent a message to Congress on July 19, 1950: *The Korean Situation: Its Significance to the People of the United States*, 23 DEP'T STATE BULL. 163 (1950).

[37] U. S. Dept of State, *Authority of the President to Repel the Attack in Korea*, 23 DEP'T STATE BULL. 173 (1950).

[38] *Id.* at 174.

[39] S. Con. Res. 92, 87th Cong., 2d Sess., 108 CONG. REC. 19,528 (1962).

[40] *Id.*

[41] *Hearings on S. Con. Res. 92 Before the Senate Comm. on Foreign Relations and the Senate Comm. on Armed Services*, 87th Cong., 2d Sess. 35 (1962).

[42] *Id.* at 36.

[43] Cuban Resolution, Pub. L. No. 87–733, 76 Stat. 697 (1962).

[44] *See generally* the material referring to the Gulf of Tonkin incident in the chapter *Military Pressures Against North Vietnam*, in 4 U.S. DEP'T OF DEFENSE, UNITED STATES—VIETNAM RELATIONS 1945–1967 (Comm. Print 1971).

[45] Vietnam Resolution, Pub. L. No. 88–408, 78 Stat. 384 (1964), *repealed by* Pub. L. No. 91–672 § 12 (Jan. 12, 1971).

[46] Vietnam Resolution, Pub. L. No. 88–408, §§ 2–3. 78 Stat. 384 (1964) (emphasis added).

[47] 110 CONG. REC. 18,403–04 (1964) (emphasis added).

[48] *Id.* at 18,409 (emphasis added).

[49] The authorization for contingency preparations was publised in March 1964. *See generally* the chapter *Military Pressures Against North Vietnam*, in 4 U.S. DEPT. OF DEFENSE, UNITED STATES-VIETNAM RELATIONS 1945–1967 (Comm. Print 1971).

[50] 381 U.S. 1 (1965).

[51] *Id.* at 17.

[52] The Tonkin Gulf Resolution was repealed by Pub. L. No. 91–672, § 12 (Jan. 12, 1971).

[53] The Senate voted to repeal the Gulf of Tonkin Resolution on June 24, 1970, and reaffirmed that vote on July 10, 1970.

[54] New York Times, Aug. 19, 1967, at 10, col. 1.

[55] Meeker, *The Legality of United States Participation in the Defense of Vietnam*, 54 DEP'T STATE BULL. 474, 484–85 (1966).

Secretary Rusk brought out a "something for everyone" shopping list of Vietnam justifications on January 28, 1966, when conceding that the SEATO treaty was not necessarily self-triggering. He stated:

"I would not want to get into the question of whether, if we were not interested in the commitments, policy and principle under the Southeast Asia Treaty, we have some legal way in order to avoid those commitments. I suppose that one could frame some argument which would make that case.

"But it would seem to us that the policy, which was discussed and passed upon by the Executive and the Senate of that day, is that we are opposed to aggression against these countries in southeast Asia: both the members of the Organization and the protocol states.

"In addition to that, we have bilateral assistance agreements to South Vietnam. We have had several actions of the Congress. We have had the annual aid appropriations in which the purposes of the aid have been fully set out before the Congress. We have had special resolutions such as the one of August 1964, and we have had the most important policy declarations by successive Presidents with respect to the protection of South Vietnam against Communist aggression."

Hearings on S. 2793 Before the Senate Comm. on Foreign Relations, 89th Cong., 2d Sess., pt. 1, at 8 (1966).

Congress remains confused. At the end of a colloquy on repeal of the Tonkin Gulf Resolution between Senator Robert Dole and myself last June, the only thing that was clear was that the authority under which United States troops have been engaged and would remain engaged in Vietnam hostilities was unclear. *See generally* 116 CONG. REC. 18,970–82 (daily ed. June 23, 1970).

[56] Southeast Asia Collective Defense Treaty, Sept. 8, 1954, art. IV, para. 1, art. IX, para. 2, [1955] 6 U.S.T. 81, T.I.A.S. No. 3170.

[57] Meeker, *supra* note 55, at 484.

[58] *Id.*

[59] *Id.* at 485.

[60] *A Conversation With the President*, 63 DEP'T STATE BULL, 103–04 (1970).

[61] Letter from U.S. Dept. of State to Sen. Thomas Eagleton, Oct. 2, 1970.

[62] *Hearings on War Powers Legislation Before the Senate Comm. on Foreign Relations*, 92d Cong., 1st Sess.—(1971).

[63] H.R.J. Res. 1355, 91st Cong., 2d Sess. § 2 (1970).

[64] S. 3964, 91st Cong., 2d Sess. (1970).

[65] H.R. 8446, 92d Cong., 1st Sess. (1971); H.R. 4194, 92d Cong., 1st Sess. (1971); H.R.J. Res. 680, 92d Cong., 1st Sess. (1971); H.R.J. Res. 669, 92d Cong., 1st Sess. (1971); H.R.J. Res. 665, 92d Cong., 1st Sess. (1971); H.R.J. Res. 664, 92d Cong., 1st Sess. (1971); H.R.J. Res. 644, 92d Cong., 1st Sess. (1971); H.R.J. Res. 431, 92d Cong., 1st Sess. (1971); H.R.J. Res. 342, 92d Cong., 1st Sess. (1971); H.R.J. Res. 275, 91st Cong., 1st Sess. (1971); H.R.J. Res. 1, 92d Cong., 1st Sess. (1971).

[66] S. 1880, 92d Cong., 1st Sess. (1971); S. 731, 92d Cong., 1st Sess. (1971); S.J. Res. 95, 92d Cong., 1st Sess. (1971); S.J. Res. 59, 92d Cong., 1st Sess. (1971); S.J. Res. 18, 92d Cong., 1st Sess. (1971).

[67] S.J. Res. 18, 92d Cong., 1st Sess. (1971).

[68] S. 731, 92d Con., 1st Sess. (1971).

[69] S.J. Res. 59, 92d Cong., 1st Sess. (1971). For the text of this joint resolution in its entirety, see APPENDIX No. 1.

[70] S.J. Res. 95, 92d Cong., 1st Sess. (1971).

[71] S. 1880, 92d Cong., 1st Sess. (1971).

[72] Senator Javits stated the guiding principle behind these legislative efforts: The enumeration of Congressional war powers in the Constitution and the historical origins of the "declare" and "Commander in Chief" clauses testify that the constitutional framers intended to grant Congress the primary authority over the initiation of war and responsibility for the formulation of basic guidelines for the conduct of war.

117 CONG. REC. 2531 (daily ed. Mar. 5, 1971).

[73] *See, e.g.*, Southeast Asia Collective Defense Treaty, *supra* note 56, art. IV, para. 1, art. IX, para. 2.

[74] Bickel goes one step further in arguing that a delegation that is too broad may result:

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 commitment 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.

Hearings on War Powers Legislation, supra note 62, at —.

[75] J. MADISON, *supra* note 10, at 475.

[76] North Atlantic Treaty, Apr. 4, 1949, art. 5, 63 Stat. 2241, T.I.A.S. No. 1964.

[77] SENATE COMM. ON FOREIGN RELATIONS, REPORT ON EX. L., NORTH ATLANTIC TREATY, 81st Cong., 1st Sess. 8 (1949).

[78] S.J. Res. 59, 92d Cong., 1st Sess. 2 (1971).

[79] The following are the signatory countries to the Charter of the Organization of American States, Apr. 30, 1948, [1951] 2 U.S.T. 2394, T.I.A.S. No. 2361: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad-Tobago, Uraguay, and Venezuela. The following are the signatory countries to the Southeast Asia Collective Defense Treaty, *supra* note 56: Australia, France, New Zealand, Pakistan, the Philippines, Thailand, and the United Kingdom. South Vietnam was designated a protocol state to the SEATO agreement. The following are the signatory countries to the North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, T.I.A.S. No. 1964; Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom.

A complete explanation of the commitments of the United States to the defense of foreign countries may be found in U.S. Dept. of State, *United States Defense Commitment and Assurances, August, 1967*, in *Hearings on S. Res. 151 Before the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess. (1967).

[80] Little v. Barreme, 6 U.S. (2 Cranch) 170 (1804); Talbot v. Seeman, 5 U.S. (1 Cranch) 1 (1801); Bas v. Tingy, 4 U.S. (4 Dall.) 37 (1800). To the Court "the whole powers" of entering into an offensive war were vested in the Congress "alone". Included in these powers was authority to declare either general or narrowly limited hostilities. Presidential authority to take offensive action under the guise of the Commander-in-Chief power arose only after Congress had acted. Talbot v. Seeman, *supra* at 27. Moreover, while the tactics of warfare might require that the President have certain discretionary powers, even these could be narrowed by precedent legislative action. Little v. Barreme, *supra* at 177–78.

[81] ARTICLES OF CONFEDERATION art. VI.

[82] Martin v. Mott, 25 U.S. (12 Wheat.) 19 (1827).

[83] S.J. Res. 18, 92d Cong., 1st Sess. 2 (1971); S.J. Res. 95, 92d Cong., 1st Sess. 2, (1971); S. 1880, 92d Cong., 1st Sess. 2 (1971).

[84] S.J. Res. 59, 92d Cong., 1st Sess. 6 (1971); S.J. Res. 95, 92d Cong., 1st Sess. 3 (1971); S. 1880, 92d Cong., 1st Sess. 3–4 (1971).

[85] S.J. Res. 59, 92d Cong., 1st Sess. 7 (1971). *See* also S.J. Res. 95, 92d Cong., 1st Sess. 6 (1971); S. 1880, 92d Cong., 1st Sess. 5 (1971).

[86] CONG. GLOBE, 30th Cong., 1st Sess. 95 1848).

[87] The following is a list of witnesses that appeared before the Senate Foreign Relations Committee's hearings on war powers:

March 8, 1971: Henry Steele Commager.

March 9, 1971: Richard Morris, Alfred Kelley.

March 24, 1971: Thomas Eagleton, Claiborne Pell, Jacob Javits.

March 25, 1971: Thomas Mason, Robert Taft, Charles Mathias, Paul Findley.

April 23, 1971: Barry Goldwater, Frank Horton.

April 26, 1971: McGeorge Bundy, George Reedy, John N. Moore.

May 14, 1971: William P. Rogers.

July 26, 1971: Alexander Bickel.

July 27, 1971: Lloyd Bentsen, Thomas Eagleton, George Ball, William D. Rogers.

October 6, 1971: William Spong, John Stennis, Lawton Chiles, Arthur Goldberg.

[88] S. 2976, 92d Cong., 2d Sess. (1972) (emphasis added). For the text of this bill in its entirety, see APPENDIX No. 2.

[89] As one of the first members of the Supreme Court, Mr. Justice Iredell, noted:

"All systems of government suppose they are to be administered by men of common sense and common honesty. In our country, as all ultimately depends on the voice of the people, they have it in their power, and it is to be presumed they generally will choose men of this description: but if they will not, the case to be sure, is without remedy. If they choose fools, they will have foolish laws. If they choose knaves, they will have knavish ones."

Case of Fries, 9 F. Cas. 826, 836 (No. 5126) (C.C.D. Pa. 1799).

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 2601) an act to provide for increases in appropriation ceilings and boundary changes in certain units of the national park system, and for other purposes.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will reconvene at 12 o'clock, meridian, on Tuesday, April 4. After the two leaders have been recognized, there will be a period for transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes, after which the Chair will lay before the Senate the unfinished business, 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.

Undoubtedly, that measure will occupy most, if not all, of Tuesday, Wednesday, Thursday, and Friday of next week. Rollcall votes are expected to occur during the week, and the leadership hopes that final action can be concluded thereon next week.

ADJOURNMENT UNTIL APRIL 4, 1972

Mr. ROBERT C. BYRD. Mr. President, pursuant to the provisions of House Concurrent Resolution 571, as amended, I move that the Senate stand in adjournment until 12 o'clock meridian, Tuesday, April 4, 1972.

The motion was agreed to; and, at 12:57 p.m., the Senate adjourned until Tuesday, April 4, 1972, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 30, 1972:

IN THE AIR FORCE

The following officer to be placed on the retired list, in the grade indicated under the provisions of section 8962, title 10, of the United States Code:

To be general

Gen. Bruce K. Holloway, [redacted] FR (major general, Regular Air Force), U.S. Air Force.

The following officer to be assigned to a position of importance and responsibility requiring the rank of general, under the provisions of section 8066, title 10, United States Code:

Lt. Gen. John W. Vogt, Jr., [redacted] FR (major general, Regular Air Force) U.S. Air Force.

IN THE NAVY

Vice Adm. Noel A. M. Gayler, U.S. Navy, for appointment to the grade of admiral for the duration of his service in duties determined by the President to be of importance and responsibility within the contemplation of subsection (a), title 10, United States Code, section 5231.

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, for a term of 4 years.

IN THE MARINE CORPS

Maj. Gen. George C. Axtell, U.S. Marine Corps, having been designated, in accordance with the provisions of title 10, United States Code, section 5232, for commands and other duties determined by the President to be within the contemplation of said section, 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.

IN THE AIR FORCE

The nominations beginning Ronald B. Appel, Jr., to be lieutenant colonel, and ending Keith H. Wolfe, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 20, 1972.

IN THE ARMY

The nominations beginning Joseph F. Short, to be major, and ending Donald J. Wilson, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 13, 1972;

The nominations beginning Chester A. Hanson, to be colonel, and ending Tony W. Todd, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 13, 1972; and

The nominations beginning James M. Jackson, to be colonel, and ending Jack Whatley, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 13, 1972.

IN THE NAVY

The nominations beginning Robert R. Groom, to be permanent lieutenant and temporary lieutenant commander, and ending Bruce D. Noonan, to be permanent lieutenant (j.g.) and temporary lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 20, 1972.

EXTENSIONS OF REMARKS

IS WASHINGTON FOOLISHLY LETTING THE RETIREE "FADE AWAY"?

HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 28, 1972

Mr. SIKES. Mr. Speaker, the Retired Officer for March 1972 carries a well written article on the utilization of retirees. It is entitled "Is Washington Foolishly Letting the Retiree 'Fade Away'?" It is written by Lt. Col. Tom Hamrick and it is well worth reading. I invite the attention of my colleagues to Colonel Hamrick's statements:

IS WASHINGTON FOOLISHLY LETTING THE RETIREE "FADE AWAY"?

(By Lt. Col. Tom Hamrick)

Maybe it was once true that "old soldiers never died, they just faded away." But if so, that was yesterday. Today retiring members of the seven uniformed services become ranking civilian executives, men of action and substance in their newly-adopted civilian communities.

"Even so, the military just writes us off as valueless," complained an embittered young Navy captain. "Except for issuing retirement checks, the armed forces, neglects what are probably its most powerful nonmilitary advocates." "Except for what we read in the press, or hear on radio and TV—and these reports are often colored grossly and adversely by media—we simply don't know what's going on within the armed forces," one TROA member added. "And, the armed forces don't really seem to care."

True enough. Except for a monthly retirement check, the only link the average retiree has with his former service is an occasional government information sheet which generally limits itself to retirement matters.

Can it be true that the seven uniformed services are spending millions of dollars on image publicity, but are leaving untouched and unchallenged an effective volunteer public relations force, its retirees, while trying to win advocates from other less receptive quarters in the civilian world?

Unfortunately, the answer is yes.

Prior to preparing this article, the author wrote a number of individual letters to congressmen, senators and members of the military hierarchy begging the questions: "What service of benefit can the retired member of the armed forces contribute to the military, except as a speaker before a civic or community group?"

Only one response of any substance was received. Most of the letters weren't even answered.

The only meaningful reply came from a military chief of information.

What he said was the same thing the retiree hears just before he hangs up his uniform for a final time. "Be our spokesman. Go forth and occupy the rostrum of the local civic clubs and be our town crier."

And with that encouragement, the retiree often considers himself totally dismissed from active military thinking.

Is there no other public service the retiree can beneficially perform for the military other than serving as an occasional luncheon speaker for a local Optimist Club? And, even so, how well qualified is he to tell the military story if what he reads comes only from the daily press? No audience is interested in a briefing which is as far out of date as the last time the retiree served on active duty. For the most part, on newly-breaking service mat-