SENATE—*Friday, April 7, 1972*

The Senate met at 9:45 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

PRAYER

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

Almighty God, we commend to Thee all who are engaged in the Government of this Nation. Grant to them special gifts of wisdom and understanding, of counsel and strength, that upholding what is right and following what is true they may enact and execute such measures as may be for the common welfare at home and peace abroad. May the whole world be filled with the knowledge of Thy truth and righteousness until war shall be no more and the way of peace and brotherhood is established in all men's hearts.

In Thy holy name we pray. 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., April 7, 1972.

To the Senate:

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

ALLEN J. ELLENDER,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, April 6, 1972, be dispensed with.

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

THE CALENDAR

Mr. MANSFIELD. I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 700 and 701.

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

AUTHORIZATION FOR PRINTING ADDITIONAL COPIES OF "INTERIM REPORT OF ACTIVITIES OF THE PRIVATE WELFARE AND PENSION PLAN STUDY 1971"

The concurrent resolution (S. Con. Res. 74) authorizing the printing of additional copies of Senate Report No. 92-634, entitled "Interim Report of Activities of the Private Welfare and Pension Plan Study, 1971," was considered and agreed to, as follows:

S. CON. RES. 74

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Committee on Labor and Public Welfare two thousand additional copies of Senate Report 92-634, entitled "Interim Report of Activities of the Private Welfare and Pension Plan Study, 1971", a report by its Subcommittee on Labor pursuant to section 4 of Senate Resolution 35, Ninety-second Congress.

AUTHORIZATION FOR ADDITIONAL EXPENDITURES FOR THE COMMITTEE ON THE JUDICIARY FOR ROUTINE PURPOSES

The Senate proceeded to consider the resolution (S. Res. 286) to provide additional funds for the Committee on the Judiciary for routine committee expenditures, which had been reported from the Committee on Rules and Administration with an amendment, in line 5, after the word "of", where it appears the second time, to strike out "1946." and insert "1946, and in Senate Resolution 255, agreed to March 6, 1972."; so as to make the resolution read:

Resolved, That the Committee on the Judiciary is authorized to expend from the contingent fund of the Senate, during the Ninety-second Congress, $40,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946, and in Senate Resolution 255, agreed to March 6, 1972.

The amendment was agreed to.

The resolution, as amended, was agreed to.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the distinguished Senator from Virginia (Mr. SPONG), Calendar No. 702, S. 3323, in accordance with the agreement of yesterday, be laid before the Senate and made the pending business.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

Does the distinguished Senator from Oregon desire recognition as acting assistant minority leader?

Mr. PACKWOOD. I do not, Mr. President.

Mr. MANSFIELD. Mr. President, will the Senator yield briefly, without losing any time?

Mr. PACKWOOD. I yield.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. ON MONDAY, APRIL 10, 1972

Mr. MANSFIELD. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock on Monday morning next.

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

ORDER OF BUSINESS

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

THE PRESIDENTIAL REGIONAL PRIMARIES ACT

Mr. PACKWOOD. Mr. President, today I am circulating for cosponsorship and later will introduce legislation establishing five regional presidential preference primaries. This legislation is designed to replace the present mishmash of presidential extravaganzas. These extravaganzas take the form of citrus circuses in Florida and winter carnivals in Wisconsin. They leave the candidates tired and broke. They leave the public bored or bewildered and—far too often—disgusted. Voters understandably ask, "When is this nonsense coming to an end?" In the process, the candidates lose their credibility and the office loses its dignity.

Credibility must be restored to the candidates because, without it, dignity cannot be restored to the most important office in the world. A plan must be devised that somehow, some way dramatically improves the "Barnum & Bailey traveling sideshow" that is in New Hampshire one week, Florida the next, and does not end until the curtain has come down a total of 24 times.

Congress must meet its responsibility of providing a vehicle for the American people to select the nominee of their party from a wide range of candidates.

I have a plan to effect this change. At the outset, however, let me emphasize that my proposal is not a panacea to cure all the ills which plague our system. It does, however, provide a change in direction which is essential if we are to restore credibility to the candidates and dignity to the office they seek.

My bill would establish a Federal Primary Elections Commission of five members appointed by the President, with the advice and consent of the Senate. The Commission would provide general administrative supervision over the regional primaries established in this bill.

My proposal establishes a system of five regional primaries throughout the Nation. Every State is included in one of the following five regions.

First. Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

Second. Illinois, Indiana, Kentucky, Michigan, Ohio, and West Virginia.

Third. Alabama, the Canal Zone, District of Columbia, Florida, Georgia, Maryland, Mississippi, North Carolina, the Commonwealth of Puerto Rico, South Carolina, Tennessee, the Virgin Islands, and Virginia.

Fourth. Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin.

Fifth. Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

The first regional primary would be held on the second Tuesday in March, with another primary to be held on the second Tuesday in each of the succeeding 4 months.

The Commission would be directed to meet 70 days prior to the March primary and determine by lot the region in which the first primary would be held. This process would be repeated for each of the remaining regions. In this way, the order of the primaries would not be known in advance.

Under the current system, some candidates begin their campaigns for nomination almost 2 years prior to the Presidential election. They are able to do this because certain States have set primary dates and all of the candidate's money, energy, and talent are focused on those particular States. A national primary would not change this, the date would still be known and candidates could still begin their campaigns far in advance.

Under my proposal, however, candidates would not know where the first regional primary would be held until 70 days prior to it. All candidates would be forced to shepherd their limited financial resources until they knew which regional primary would be first.

Practical politics would dictate that a candidate spend most of his available time in the region holding the next primary. In a national primary, by contrast, a candidate would be in Los Angeles today, New York tomorrow, and Florida a day later. The Boise, Idahos, and the Keokuk, Iowas, would never see the candidate. This whirlwind approach would fatigue the candidates, sour the voters, and badly erode confidence in Government.

In order to qualify for the ballot under my plan, a Presidential aspirant must be "generally recognized in national media throughout the United States" as a candidate, whether a candidate were so "recognized" would be determined by a majority of the Commission. If he were not so "recognized," his name could still be added if he either, first, filed a petition signed by 1 percent of the registered voters of the region or, second, paid a filing fee of $10,000 which would be refunded if he received 5 percent of the vote in the region. A candidate could have his name removed from the ballot if he stated unequivocally in writing that he was not and did not intend to become a candidate for President.

A further weakness of the present primary system is the hit-and-miss method of selecting delegates to national conventions. About one-third of the States select delegates by direct election sometime between March and July. In the remainder of the States, delegates are selected through internal party processes. There is no guarantee that delegates will represent the proportional strength of the various candidates in each State. An unjustifiable amount of time, talent, money, and energy is spent by Presidential aspirants in electing delegates, rather than discussing the issues. Organizers are sent to primary States months in advance. Delegates are interviewed and selected. Slates are formed. A principal campaign organizer for one of this year's major Democratic aspirants has said, "the name of the game is delegates." The name of the game should be issues and philosophy. And all of this hocus-pocus delegate selection process is usually removed from and misunderstood by the people.

My proposal would change that. Delegates would not be elected to the national convention. Instead, any presidential candidate who received 5 percent of the votes cast in a regional primary would be able to appoint delegates to the national convention according to the percentage of the vote which he received in each State. If a candidate received 40 percent of the vote in a particular State, he would appoint 40 percent of the State's delegates to the national convention. This would enable the candidate to concentrate on issues during the campaign and would insure that the delegates represented the candidate's proportional strength in that State, and were dedicated to the candidate's ideals and philosophies. The delegates would be required by law to support their candidate at the national convention until:

First, the candidate releases them; or

Second, the candidate receives less than 20 percent of the vote; or

Third, two ballots have been taken.

Mr. President, I ask unanimous consent that the Presidential Regional Primaries Act 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. —

A bill to provide for the regulation of the process by which the people of the United States select the President and Vice President by establishing a series of 5 regional primary elections at which the people may express their preference for the nomination of an individual for election to the office of President

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 "Presidential Regional Primaries Act".

FINDINGS

SEC. 2. The Congress finds that—

(1) the proliferation of elections held by States for the expression of a preference for the nomination of individuals for election to the office of President subjects candidates for nomination for election to such office to physical exhaustion, danger, and inordinate expense;

(2) there is no uniformity among State laws with respect to the effect of such elections on delegates to the nominating conventions held by political parties;

(3) the confusion caused by this lack of uniformity in State laws gives rise to cynicism, frustration, and distrust of the nomination process;

(4) the national nominating conventions held by political parties constitute an integral part of the process by which the President is chosen by the people of the United States; and

(5) in order to protect the integrity of the presidential election process and provide for the general welfare of the Nation, it is necessary to regulate the part of the process relating to the nomination of candidates for election to the office of President.

ESTABLISHMENT OF REGIONAL PRIMARIES

SEC. 3. (a) No State shall conduct an election for expression of a preference for the nomination of individuals for election to the office of President except in accordance with the provisions of this Act.

(b) Five regional primaries shall be held during each presidential election year. The first regional primary shall be held on the second Tuesday of March, and an additional regional primary shall be held on the second Tuesday of each of the 4 succeeding months. Seventy days before the date of the first regional primary, the Commission shall determine by lot the region in which that primary is to be held. The Commission then shall determine by separate lot, conducted 70 days before the date of each subsequent regional primary except the last, the region in which each subsequent regional primary is to be held.

(c) (1) At each such regional primary, there shall appear on the ballot, together with the name of the political party with which he is affiliated, the name of each individual who is generally recognized in national news media throughout the United States as a candidate for nomination by a national political party for election to such office, as determined by a majority of the members of the Commission.

(2) An individual whose name is not placed on a regional primary ballot by the Commission under paragraph (1) may have his name and the name of the political party with which he is affiliated appear on the ballot, if he is eligible for election to the office of President, by notifying the Commission in writing that he is a candidate for nomination by a political party (specifying which political party) for election to the office of President, and—

(A) presenting the Commission with a petition supporting his candidacy for such nomination, signed by 1 percent of the registered voters in the region in which he wishes to appear on the primary ballot (not more than 25 percent of the signatures necessary shall come from any State within that region); or

(B) paying a filing fee of $10,000 which shall be refunded if he receives 5 percent or more of the total number of votes cast by members of his political party in the regional primary. The notification and presentation of payment shall be made to the Commission by such date before the primary as the Commission may prescribe but not earlier than 45 days or later than 35 days prior to the date on which the primary is to be held in that region.

(3) The Commission shall announce—

(A) a tentative list of individuals for whom votes may be cast at a regional primary 70 days before the date of that primary; and

(B) a final list of individuals for whom votes may be cast at a regional primary 30 days before the date of that primary.

(d) The Commission shall not include on the ballot of any regional primary the name of any individual who executes and files with

the Commission the following affadavit, executed under oath:

I, ——— ———, being first duly sworn, do depose and say that I am not, and do not intend to become, a candidate for nomination for election, or for election, to the office of President of the United States.

State of ———.

County or city of ———.

Subscribed and sworn to before me this — day of ———, 19—.

———— ————,

————.

SEAL.

My commission expires ———, 19—.

(e) Subject to such guidelines as the Commission may promulgate, the regional primary shall be conducted in each State by officials of that State charged with conducting elections. Voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Each voter shall be eligible to vote only for a candidate for nomination by the party of that voter's registered affiliation. If the law of any State makes no provision for the registration of voters by party affiliation, voters in that State shall register their party affiliation in accordance with procedures promulgated by the Commission.

(f) The chief executive officer of each State shall certify the results of the regional primary held in his State to the Commission within a period of time after such date, not exceeding 15 days, prescribed by the Commission.

APPOINTMENT OF CONVENTION DELEGATES

SEC. 4. (a) A candidate who receives 5 percent or more of the votes cast by members of his political party in a regional primary shall appoint delegates from States within the region within which the primary was held to the national nominating convention held by the political party whose nomination he seeks.

(b) The number of delegates which a candidate shall appoint in any State within that region is a number which is a percentage of the total number of delegates from that State to his party's national nominating convention equal to the percentage of the votes cast by members of his party in that State received by him in the primary.

(c) If a candidate receives less than 5 percent of the votes cast by members of his political party in a regional primary, he may not appoint a delegate from any State within that region. The percentage of the votes cast for such a candidate by members of his political party in any State within that region shall be (1) apportioned among the other candidates of the same political party who received votes in that State on the basis of the number of votes received by each of such other candidates and (2) added to the percentage of the votes received by each of such other candidates in that State for the purposes of determining the number of delegates they may each appoint under subsection (b).

(d) If a candidate fails or refuses to appoint delegates to which he is entitled in any State within a reasonable time, as prescribed by the Commission, the Commission shall appoint delegates pledged to support such candidate at the national nominating convention held by his party. Such delegates shall be bound to support such candidate at the convention to the same extent as if they had been appointed by that candidate.

CONVENTION BALLOTING

SEC. (a) A delegate to a convention held by a political party for the nomination of a candidate for election to the office of President shall vote for the nomination of the candidate who appointed him or for whom he was appointed until—

(1) 2 ballots have been taken; or

(2) such candidate receives less than 20 percent of the vote on a ballot; or

(3) such candidate releases him.

(b) If an individual receives a majority of the votes cast on a ballot, he shall be the nominee of that party for election to the office of President. A subsequent ballot may be taken to reflect the support of the entire convention for such candidate, but the result of the subsequent ballot shall not, in such case, result in the nomination of a different individual for election to such office.

(c) The individual who will be the candidate of a political party for election to the office of Vice President shall be selected by the convention held by that party in accordance with such procedures as it may adopt.

REIMBURSEMENT OF STATES FOR COSTS OF PRIMARY

SEC. 6. Upon application therefor, the Commission shall reimburse each State for the costs it incurs in conducting a regional primary held in accordance with the provisions of this Act. Such applications shall be submitted at such times and in such form, and shall contain such information, as the Commission shall require.

ESTABLISHMENT OF FEDERAL PRIMARY ELECTIONS COMMISSION

SEC. 7. (a) There is hereby established a bipartisan Commission to be known as the Federal Primary Elections Commission.

(b) The Commission shall be composed of five Commissioners not otherwise employed by the Federal Government appointed by the President, by and with the advice and consent of the Senate. Each Commissioner shall be a member of a political party which polled not less than ten million votes in the presidential election immediately preceding his appointment. Not more than three Commissioners may be members of the same political party.

(c) The Commission shall select a chairman from among its members. Three Commissioners shall constitute a quorum.

(d) The term of office of each Commissioner shall be five years, except that—

(1) the terms of office of the Commissioners first taking office shall expire, as designated by the President at the time of appointment, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the first presidential election which occurs after the date of enactment of this Act;

(2) any Commissioner appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(3) upon the expiration of his term of office a Commissioner shall continue to serve until his successor is appointed and has qualified.

(e) The Commissioners shall have an official seal which shall be judicially noticed.

(f) The Commissioners shall serve without compensation; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission.

(g) The Commission is authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, an administrative officer, and to fix his compensation, without regard to the provisions of chapter 51 and subchapter 53 of such title relating to classification and General Schedule pay rates, at an annual rate not to exceed the annual rate prescribed by section 5315 of title 5, United States Code, for level IV of the Executive Schedule.

(h) The Commission is authorized to appoint and fix the compensation of such other personnel as it deems advisable.

DUTIES OF THE COMMISSION

SEC. 8(a) The Commission shall meet prior to each regional primary and at such other times as it deems necessary, and shall—

(1) publish tentative and final lists of the individuals for whom votes may be cast in each regional primary ballot and furnish a certified final list of such individuals to the appropriate officials of each State 30 days before a regional primary is to be held in that State;

(2) determine the sufficiency of any petition presented to the Commission under section 3(c);

(3) prescribe the date, after the date of a regional primary, on which the chief executive officer of each State shall certify the results of the regional primary held in his State to the Commission;

(4) promulgate guidelines and procedures to be followed by the States in conducting regional primaries;

(5) review applications for reimbursement submitted under section 6, prescribe the time of submission form, and information content of such applications, and determine and pay, the amount to be reimbursed to each State under such section;

(6) consult and cooperate with State officials in order to assist them in conducting regional primaries;

(7) determine by lot in accordance with section 3(b) the order in which the regional primaries are to be held;

(8) receive and hold any filing fee paid under section 3(c)(2)(B) and—

(A) refund that fee to the candidate who paid it if he receives a number of votes in the regional primary with respect to which he paid it equal to 5 percent or more of the total number of votes cast by members of his political party in that primary; or

(B) pay the fee into the general fund of the Treasury if it is not refundable under clause (A) of this paragraph.

(9) appoint delegates when necessary under section 4 (d); and

(10) take such other actions as may be necessary to carry out the provisions of this Act.

(b) The Commission shall report to the Congress and the President not later than 180 days prior to the date of the first regional primary to be held under this Act on the steps it has taken to implement the provisions of this Act, together with recommendations for additional legislation, if any, which may be necessary in order to carry out the regional primary system established under this Act.

DEFINITIONS

SEC. 9. As used in this Act, the term—

(1) "Commission" means the Federal Primary Elections Commission established under section 7;

(2) "region" means any of the following five regions:

(A) Region 1 comprises Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Connecticut, New York, Pennsylvania, New Jersey, and Delaware.

(B) Region 2 comprises Michigan, Illinois, Indiana, Ohio, West Virginia, and Kentucky.

(C) Region 3 comprises the District of Columbia, Maryland, Virginia, North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, the Commonwealth of Puerto Rico, th Virgin Islands, and the Canal Zone.

(D) Region 4 comprises North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana.

(E) Region 5 comprises Washington, Oregon, Montana, Idaho, Wyoming, California, Nevada, Utah, Colorado, Arizona, New Mexico, Alaska, Hawaii, and Guam.

(3) "regional primary" means an election held in accordance with the provisions of

this Act for the expression of a preference for the nomination of individuals for election to the office of President;

(4) "national political party" means a political party whose presidential electors received in excess of 35 percent of the total number of votes cast for all presidential electors in the most recently held presidential election;

(5) "candidate" means an individual who is a candidate for nomination by a political party as its candidate for election to the office of President;

(6) "national nominating convention" means a convention held by a political party for the nomination of candidates for election as President and Vice President; and

(7) "State" means the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, and each of the United States.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. PACKWOOD. Mr. President, that, in brief, is my plan. In many ways, it is a reflection of Oregon's primary law. Oregon, as Senators know, was the first State to adopt a presidential primary statute in 1911, and its primary has become one of the Nation's most prestigious. It is the only State which requires all "nationally recognized" presidential candidates to participate.

Mr. President, there certainly existed valid reasons during the first two decades of this century to change our nominating process. Party bosses were guilty of devious maneuvers. Political meetings were held in saloons or behind closed doors. Conventions took place hours earlier than scheduled. These were clearly the days of the backroom boys and the smoke-filled rooms.

Reformers hoped that by democratizing the nominating process, the Presidency could be returned to the people. This was the noble goal of those progressives who hoped to wrest the control of American politics from the ruling factions.

The system worked well, however, only so long as the Nation had less than a dozen significant primaries scattered throughout the country. With the proliferation of such primaries, this noble dream has become a nightmare. This innovative reform, conceived in logic, has been tarnished in practice.

Proposals to alter the process of selecting party nominees have been considered since the beginning of the Republic. Senator James Hillhouse, for example, suggested in 1808 that we might be protected from the dangers of partisan conflict if retiring Senators would simply meet annually and draw lots for a 1-year presidential term.

The current presidential primary system has been under fire since primaries were first used extensively in 1912. At that time, Oklahoma Senator Robert L. Owen introduced legislation calling for the direct nomination of presidential candidates. More recently, the distinguished senior Senator from Montana (Mr. MANSFIELD) and the distingushed senior Senator from Vermont (Mr. AIKEN) have proposed a constitutional amendment establishing a national primary for the selection of party nominees.

While I share the dismay of Senators MANSFIELD and AIKEN, I do not believe that a national primary provides the best alternative.

A national primary has certain inherent disadvantages that are eliminated by a series of regional primaries. A national primary would favor two types of candidates:

First. Those with access to the national news media center in Washington, D.C., and

Second. Those candidates with easy access to enormous sums of money.

Under a national primary, those candidates outside Washington are placed at a distinct disadvantage. The principal wire services, the three national television networks, and most of the Nation's larger metropolitan newspapers and magazines have reporters in Washington. The media can readily receive the reaction of a U.S. Senator to a major national or international event. A Governor, however, is less likely to appear on the evening television newscasts or have his thoughts published.

To understand this situation, it is necessary to recall the change which took place in the 1950's, leaving an indelible imprint on American presidential politics. That change involved a concentration of the media in Washington. More stories about government and politics emanated from Washington and fewer stories were filed from other sections of the Nation.

Governors of large States joined Governors of small States in obscurity. True, the change was gradual, but it was inevitable as the 1960's came into focus that Governors, mayors, and less prominent public officials outside Washington played a smaller role in presidential politics. The big leagues of politics switched almost solely to Washington and the limelight focused on the U.S. Senate.

As a result, both major party nominees in 1960, 1964, and 1968 had previously served in the Senate. And in 1972, there remains not a single serious candidate for either party's nomination who does not fall into the category of being a present or former U.S. Senator.

With a single national primary, this trend would undoubtedly continue. Under a regional primary plan, however, a relatively unknown candidate with leadership potential would have an infinitely better chance of securing the party nomination.

In a national primary, an unknown, competent candidate could not defeat a better-known opponent without enormous sums of money. It can be argued, of course, that the cost of campaigning nationwide would be no more than the cost of competing in five regional primaries. This may be true, but if the only primary is a national primary, an unknown candidate could not contemplate participating unless he could raise enough money in advance to guarantee that his name would become a household word. It would be a very unusual candidate who could raise that much money "on the come."

This is not to say, Mr. President, that there are not great minds or excellent leaders in the Senate today. There are. Nor is it to say that the rich cannot be competen Prtesidents. They can. I do not believe, however, that it would be in the national interest to limit candidates for President to Senators or the wealthy.

Regardless of the candidates, a national primary would work to the detriment of the electorate. Voters would be forced to make their choice on the basis of slick television commercials or elaborately staged rallies in densely populated areas.

A regional primary would allow a candidate to spend a relatively small amount of time and money in order to determine whether he had widespread support. If he did well in the first primary, he would be off and running. If he did poorly, he could avoid the embarrassment and expense of hopelessly campaigning nationwide. It would also give his supporters and contributors a chance to become involved with a more viable candidate.

He could enter the first primary and, if he did well, could marshal the organizational and financial backing necessary to garner additional support. His candidacy would have the chance to catch fire and gather momentum.

Most objective observers agree that Jack Kennedy would not have been the Democratic nominee in 1960 had he not entered the significant primaries and won them all. The primaries were the only way he could show his support among rank-and-file Democrats to the party leaders, who generally opposed his nomination. Kennedy had to prove that a Catholic could be elected President.

In short, regional primaries would allow a candidate to gracefully withdraw if his campaign failed to catch fire. They would also allow a smoldering ember to be built into a blazing bonfire.

Under my measure, moreover, the voters would have a better chance to judge a candidate's true qualifications. "Madison Avenue" would be shelved. A more personal and direct approach would result.

The trademarks of a national primary would be "image" and "style." Neither has substance.

The trademarks of a regional primary would be "issues" and "answers." Both have meaning.

If we are to restore "faith" and "hope" to our system of government, the last thing we can afford is the "impersonal" approach that is bound to result from a national primary.

If we are to return "government to the people" and restore their confidence in that government, we have an infinitely better opportunity through the regional primary concept.

Mr. President, with the conclusion of the Wisconsin primary just 3 days ago, we have observed the results of four State presidential primaries. What, if anything, do these primaries tell us? What do they say about HUBERT HUMPHREY, who lost in Florida without really losing? What about ED MUSKIE, who won in New Hampshire without really win-

ning? Or how about TED KENNEDY, who did not participate at all?

The most important lesson to be learned is the folly of the current method of selecting party nominees.

We must return credibility to the candidates and dignity to the Presidency. The regional presidential primary offers the best hope of attaining that admirable goal.

ORDER OF BUSINESS

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

THE FAA MANAGEMENT OF NATIONAL AND DULLES AIRPORTS

Mr. SPONG. Mr. President, I am deeply concerned over the Federal Aviation Administration's continuing disregard of the public and the public interest in its management of National and Dulles Airports.

These are the only two federally owned and operated airports in the country and one might hope that they would be made models for others to follow in making efficient use of available resources and dealing with the environmental impact on the community. Quite the opposite is true, however. Under FAA management, the overriding guide to policy seems to be, "What do the airlines want?"

It was perhaps that attitude that the Office of Management and Budget had in mind when it wrote to me last year explaining why it was proposing sale of the airports. Among the reasons cited was the following:

> There are elements of a "conflict of interest" in FAA's handling of Dulles and National Airports because of other FAA responsibilities in the area of airport certification, allocation of airport grants, and concern with airline industry finances.

Mr. President, a case in point would seem to be the FAA's policy with regard to the leasing of Federal land at National Airport for airline use and improvement. A General Accounting Office study into the legal status of the new American Airline and TWA–Northwest terminal facilities at National turned up the interesting fact that the FAA has been leasing the approximately 100,000 square feet to the airlines at 15 cents a square foot. This despite Office of Management and Budget general guidelines that Federal land be leased at fair market value. This despite the fact that just to recover Federal overhead costs at the facilities would require a fee of about $1.76 a square foot. And this despite the extremely valuable commercial use that is made of the land.

One reason for this cutrate charge is that the FAA permitted the air carriers to construct facilities on Federal land without first having a negotiated agreement in hand. Only after the buildings were completed and in operation were these matters discussed and by then, of course, all bargaining leverage had passed to the air carriers' side of the table.

The GAO report, which I ask unanimous consent to have printed at the conclusion of my remarks, is critical of this FAA contracting procedure.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. SPONG. Mr. President, the report states:

> The apparent flaw in the adequacy of FAA's contracting procedures, as demonstrated in the Northwest, Trans World and American Airlines situation is that of permitting air carriers to construct facilities in the absence of previously executed agreements. The agreements that finally may be negotiated with the three air carriers may reflect pressure to include provisions, covering such matters as amortization of carrier investments, which may not be in the best interests of the Government. Also, the agreements may set the pattern for the renewal agreements with the other air carriers.
>
> For the protection of all parties concerned, agreements for any additional construction should be executed prior to the commencement of construction.

Mr. President, since that GAO report in September 1971, the FAA has negotiated a new contract with American, TWA, and Northwest increasing the leasing fee to what amounts to the cost-recovery charge of $1.76 a square foot. Apparently, there is no charge at all being made for use of the Federal land itself. What is more, nine other air carriers which have leased land for expanded facilities continue to pay 15 cents a square foot.

Over the period between April 1970 when all of the new facilities were open and the end of September 1971 when an adjustment in the lease fee was negotiated with three of the airlines, the FAA apparently has absorbed the difference between 15 cents a square foot and the $1.76 break-even figure. I have asked the GAO to calculate what that alone would cost the taxpayer and, in addition, what might have been realized to the taxpayers' benefit if something approaching market value had been charged.

Mr. President, while the air carriers are leasing Federal property at 15 cents a square foot and making huge profits while doing it, the average air traveler who tries to park at the airport is paying what amounts to $22.70 a square foot. This is based on the minimum all-day parking fee of $2.50 and assuming 40 square feet for a parking space. Now, if the FAA wants to give somebody a break in the use of Federal land, I think that break ought to go to the public that uses National Airport. It seems to me there is a greater need for parking down there than anything else.

Mr. President, it is true that the administration is given broad discretion to lease facilities at the airports he manages upon such terms as he may deem proper and appropriate. There is serious question in my mind, however, whether a charge which is below the cost to the Federal Government is appropriate and can be justified. I question, too, the apparent exception to the Federal guidelines claimed by the FAA. As previously mentioned, OMB guidelines call for a fair market return. In addition, the Economy Act of June 30, 1932, specifically prohibits its special considerations in setting of lease fees. I quote from section 321 of the act:

> Except as otherwise provided by law, the leasing of buildings and properties of the United States shall be for a money consideration only, and there shall not be included in the lease any provision for the alteration, repair, or improvement of such buildings or properties as a part of the consideration for the rental to be paid for the use and occupation of same. The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts.

There is good reason for such a law. The funds collected from lease of Federal land is tax money. If an agency were allowed to reduce lease charges below market value and even below cost in consideration of some private interest's investment, then the taxpayers of this country would, in fact, be paying for all or part of that investment, and it would have been accomplished outside the regular appropriations process. This is not even backdoor financing; it is trapdoor financing.

The FAA argues that the bargain-basement rates it is giving the air carriers at National is justified because the title to the facilities has or will pass to the Federal Government, and the FAA, as a result, feels it should help the air carriers amortize their investment. As a practical matter, however, the title transfer means very little to the airlines since they are assured by lease long-term, exclusive use of the premises. Also, written into their agreements is a provision allowing the airlines to claim full tax depreciation on those investments, in addition to which there are the handsome profits they will make from operations at those facilities. Why then should the FAA allow the air carriers to cover their investment yet again through discounted lease charges?

Again, it may be that the FAA is somehow not bound by the letter of the Economy Act, but I would think it has some responsibilities to the spirit of the law. Certainly, the taxpayers ought to know that they are helping to finance new terminal facilities at National and ought to have the opportunity to decide whether they would not prefer to have the facilities which they pay for at Dulles airport used first. I claim to expertise in contract matters but I think I know a poor deal when I see one.

Mr. President, beyond the dollar question involved here is a more far-reaching issue of the FAA's responsibility to promote greater use of Dulles, which was built at a cost of $110 million and which has operated in the red since it was opened 10 years ago. Even without the special considerations referred to earlier, the average terminal rental fee at National is $7 a square foot while at Dulles the fee ranges from $9 to $11 a square foot.

One might reasonably expect that in a situation where one airport is strained far beyond its planned capability and the source of growing community complaint while the other is starving for business, the fees would be such as to promote more balanced use. In fact, the Depart-

ment of Transportation in its Congressional Air Transportation Congestion differential pricing on other airports. Let me read from that report:

An alternative solution which is more desirable from the standpoint of the efficient allocation of resources is to set landing fees proportionate to costs. This would imply that operations at peak periods pay higher fees than at non-peak periods. DOT has concluded on the basis of studies which it carried out in this area, that such differential pricing is in the public interest.

The particular focus in this study was on ways to even out peak-hour loads at a single airport; but clearly the recommendations would apply as well to balancing traffic at two airports serving the same region. Unfortunately, DOT has not seen fit to apply the pricing policy it recommends at the two airports which its own agency—the FAA—operates. Indeed, the opposite is true. A discount prevails at the most congested of its two facilities.

Mr. President, a related aspect of the FAA's management of these two airports is the failure to give the communities involved any voice in policies which affect their environment. A few weeks ago, for example, the FAA decided to experiment with new takeoff procedures which allow jets to proceed under full power to an altitude of 3,000 feet rather than cutting back to half power at 1,500 feet as has been the case for some time. The first notice residents of the area had of the change was when they were suddenly bombarded with greatly increased noise one morning.

The FAA for some time has been talking informally about the possibility of requiring developers and real estate agents to notify their customers of the existence of an airport noise problem. But the FAA apparently feels no compulsion to give public notice when it creates a noise problem. I know of at least one family that purchased a home in Virginia on the assurance that it was a quiet neighborhood only to wake up a few mornings later to the booming noise of jets over their house.

Public notice is the very least that one might ask. At a time when environmental considerations are of such importance and concern, one might hope also there would be public hearings, an environmental impact study, and an investigation of alternative ways of accommodating air traffic. There has been none of that.

Fortunately, Mr. President, the residents of this area may be able to look to another Federal agency to defend their interests. For the first time in my experience with this issue, the Environmental Protection Agency is expressing some concern about policies at the two airports. In reference to the FAA's plans to seek appropriations for a major expansion and modernization of National, EPA told GAO it would require an environmental impact statement and, further, that—

We anticipate significant difficulty in any expansion of that airport, due mainly to increased congestion, noise and its location in an urban environment. Alternate means of meeting air transportation needs, such as use of other available facilities would have to be discussed, as required in the Council of Environmental Quality Guidelines.

Mr. President, I welcome EPA's interest in this matter and I think the Interior Department, out of concern for beautification of the Potomac if nothing else, should also get involved. But the better answer lies, in my view, in the sale of these airports to a responsible regional or local authority which will operate them in the true interest of the public.

Mr. President, I ask that the second GAO report which I referred to be printed at this point.

EXHIBIT 1

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., September 10, 1971.

Hon. WILLIAM B. SPONG, Jr.,
U.S. Senator.

DEAR SENATOR SPONG: In our report to you entitled "Growth And Use of Washington Area Airports" (B–159719, dated August 18, 1971), we stated that we planned to furnish you a report at a later date in response to your questions concerning the legal status and jurisdiction over improvements made by the air carriers at Washington National Airport (National) in the event the airport is sold. Information on this matter follows.

In January 1966, the Federal Aviation Administration (FAA) issued a statement to representatives of air carriers serving the Washington area explaining that some of the air carriers operating at National had approached FAA with requests to improve or construct certain facilities at National for their exclusive use and occupancy. According to FAA's statement, the air carriers' requests contemplated the leasing of land area and unoccupied space in the main terminal, and undertaking improvements and construction at their own expense.

In its statement, FAA advised the carriers that (1) the Government would entertain requests from any scheduled air carrier operating at National for improvement of existing facilities, rental of unused facilities, or rental of land area; (2) any agreement with an air carrier must commence on a mutually agreeable date and expire on or before September 30, 1971; and (3) an air carrier's rights under such an agreement would not be permitted to interfere with the Government's plans or preparations for any improvement it might decide to make in the airport areas in which the carrier's facilities were located.

As shown in the following listing of information furnished by FAA, 12 air carriers have improved and constructed facilities at National since 1965.

Air carrier and estimated cost	
United Air Lines: Ticketing and hold rooms, and in-flight food kitchen	$900,000
Eastern Airlines: Ticketing and hold rooms	1,500,000
American Airlines: Ticketing and passenger facilities	3,200,000
Northwest/Trans World Airlines: Ticketing and passenger facilities	6,500,000
National Airlines: Ticketing and passenger facilities	470,000
Northeast Airlines: Operations and hold room facilities	200,000
Piedmont Airlines: Ticketing and hold rooms	50,000
Braniff International: Ticketing and hold room	85,000
Delta Air Lines: Hold room	109,000
Lake Central Airlines: Ticketing and hold room	$25,000
Allegheny Airlines: Ticketing and hold room	250,000
Total estimated cost of new facilities and improvements	13,289,000

All of the above listed improvements and new construction had been completed by April 1970. FAA considered that the air carriers' improvements to existing facilities at National were covered by the use agreements in effect and made no additional charges as a result of such improvements. Nine of the 12 air carriers, who have made improvements and constructed new facilities involving the use of additional land area at an estimated cost of about $3.6 million, have entered into agreements with FAA for the use and disposition of new facilities. The remaining three air carriers—Northwest Airlines, Trans World Airlines, and American Airlines—have constructed new facilities at an estimated cost of about $9.7 million but had not, at the time of our inquiry, entered into agreements with FAA for their use and disposition. An FAA official advised us that a meeting with the three air carriers was scheduled for September 8, 1971, at which time he expected the carriers to sign agreements with FAA.

FAA agreements with the nine air carriers—applicable to their new facilities—provide for an annual charge of $.15 a square foot for the ground space occupied at National. The same charge has been imposed on, and paid by, Northwest, Trans World, and American Airlines even though these air carriers had not entered into agreements with FAA covering their facilities.

Eight of the nine agreements covering new facilities expire on September 30, 1971, and one expired on July 31, 1971. In the case of the expired agreement, FAA officials advised us that, until a new agreement could be consummated, they were continuing to charge the air carrier for ground space at the rate prescribed in the expired agreement.

Under the terms of each of the nine agreements, legal title to the facilities constructed by the air carriers passes to the Government upon the expiration of the period fixed in the agreements. Since one agreement has expired, title to the applicable facilities has passed to the Government.

If National is sold prior to the expiration of FAA's agreements with the eight air carriers, the purchaser of National would acquire the rights of the Government to the transfer of title in accordance with the provisions of the agreements. After expiration of the agreements (September 30, 1971), the Government would acquire title to the air carrier-constructed facilities and the purchaser would acquire title to the facilities upon consummation of the sale. In the latter situation, however, there could be new FAA agreements with the air carriers, and the purchaser ordinarily would take title subject to the leasehold interests of each of the air carriers pursuant to such agreements.

The draft of the agreement being negotiated by FAA with Northwest Airlines and Trans World Airlines for the new joint facilities constructed includes provisions for the passage of title to the facilities to the Government and for lease charges similar to those in the nine executed agreements, and for the re-leasing of the facilities to the two carriers after September 30, 1971. The agreement being negotiated with American Airlines contains similar provisions.

We were advised by an FAA official that the entering into agreements with Northwest and Trans World Airlines and with American Airlines has been delayed because of diffi-

culty in reaching accord on terms relating to the leasing fees to be charged these air carriers for use of the new facilities after September 30, 1971. He advised us also that the fees to be charged these air carriers after September 30, 1971, will include an offsetting factor to reflect the substantial investments made by the three air carriers in new terminal facilities at National.

The FAA official also indicated that the agreements with the other nine air carriers covering their new facilities at National do not prescribe the fees to be charged after the termination dates of those agreements. He stated that this would not be a critical factor in the negotiations with these nine air carriers because their investments in terminal facilities were substantially smaller than those of Northwest, Trans World, and American Airlines.

The Government's general policy regarding charges and fees for the leasing of Federal property is contained in Office of Management and Budget (formerly Bureau of the Budget) Circular No. A-25. Paragraph 3b of this Circular provides as follows:

"Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government."

The apparent flaw in the adequacy of FAA's contracting procedures, as demonstrated in the Northwest, Trans World, and American Airlines situations is that of permitting air carriers to construct facilities in the absence of previously executed agreements. The agreements that finally may be negotiated with the three air carriers may reflect pressure to include provisions, covering such matters as amortization of carrier investments, which may not be in the best interests of the Government. Also, the agreements may set the pattern for the renewal agreements with the other nine air carriers.

For the protection of all parties concerned, agreements for any additional construction should be executed prior to the commencement of construction.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report. We did not obtain comments from the Department of Transportation on this report; this fact should be taken into consideration in any use made of the information presented.

We trust the information furnished will serve your purposes.

Sincerely yours,

B. M. KILLER,
Acting Comptroller General of the United States.

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

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 30, 1972.

Hon. WILLIAM B. SPONG, JR.,
U.S. Senate.

DEAR SENATOR SPONG: Further reference is made to your letter of August 25, 1971, concerning the construction of facilities at Washington National Airport under a modernization plan calling for the expenditure of $157 million. Of this amount, it is anticipated that the air carriers and concessionaires would provide $79 million and $52 million, respectively, and the Government's share would be $26 million. The plan includes expanding the main terminal, expanding the north terminal area, and adding passenger loading fingers and passenger waiting rooms.

With regard to such plan you asked five questions. As previously stated in our letter to you of September 7, 1971, since those questions involved matters concerning the functions of several agencies we requested the views of the agencies involved. Those questions, pertinent agency comments, and our discussion of them, where appropriate, are set forth below as follows:

"1. Does the FAA have the authority to allow air carriers and concessionaires to construct facilities at National without prior congressional approval of the project and/or of any contractual obligations that may go along with it."

In commenting on this matter the Administrator, Federal Aviation Administration. stated, in part, that—

"This practice is authorized by the laws under which we operate the two national capital airports. (The Act of 29 June 1940 for Washington National Airport, and the Act of 7 September 1950 for Dulles International Airport.) Both Acts empower the Secretary of the Department of Transportation '. . . to lease under such conditions as he may deem proper . . . space or property within or upon the airport for purposes essential or appropriate to the operation of the airport.' Authority to enter into leases of property consistent with sound airport commercial practice is essential to proper and efficient operation of any airport. There is little doubt that the Congress intended to grant to the Secretary that degree of authority necessary or essential to effective and efficient operation of the two airports. This intent on the part of the Congress is apparent from a reading of Section 6 of the Act authorizing construction and operation of Dulles International Airport which provides that '. . . concession contracts involving construction of permanent buildings or facilities . . .' may be let for longer than five-year terms; and in the House Committee section-by-section analysis of the bill that became this law (hearings on H.R. 7241 May 18, etc., 1950, p. 8) it was stated that '. . . contracts by private enterprise to erect permanent structures at substantial values . . .' were clearly authorized, and that the added term was for the purpose of permitting the investor to 'write off' the capital investment.

* * * * *

"The rates, fees, and charges under our tenant concessionaire contracts are negotiated taking into consideration the alterations, repairs, and improvements made by the lessees and concessionaires. The Congress has been aware of this for many years as the hearings on the Act of 7 September 1950 (Second Washington Act) indicate, particularly in the deliberations of Section 6 referenced above."

In view of the above explanation it seemed clear that the Congress intended to authorize the construction of facilities by concessionaires at Dulles International Airport but it was not so clear that the same authority was intended at Washington National Airport.

Accordingly, and as reported to you by letter of November 19, 1971, we requested additional comments from the Federal Aviation Administration (FAA) concerning the question whether the contracting authority of Washington National Airport was coextensive with that of Dulles International Airport. In their reply of February 20, 1972, it was pointed out that when S. 456 (which bill subsequently was enacted into law and provided for the construction of the Dulles International Airport (IAD)) was being considered on the floor of the Senate there were approved a number of committee amendments and an amendment offered by Senator Schoeppel. The discussion of those amendments indicates that the purpose of such amendments was to put the operation of the proposed new airport on the same footing as that of the Washington National Airport.

The discussion of those amendments is set out on pages 5391–5394 of the Congressional Record of April 19, 1950, and copies of such pages are enclosed herewith.

Further indications that the Congress intended that FAA have authority to enter into lease or concession agreements which called for the construction of improvements by lessees and concessionaires are set forth in FAA's reply as follows:

"1. First Supplemental Civil Functions Appropriations Act for Fiscal Year 1941 (Act of 9 October 1940), (P.L. 76–812, 54 Stat. 1030, 1039). This act authorized a longer lease for the restaurant concession at DCA because the magnitude of expenditures by the concessionaire for necessary facilities and improvements precluded their amortization over a short-lease period. (See Hearings on H.R. 10539, the First Supplemental Civil Functions Appropriations Bill for 1941, Senate Appropriations Subcommittee, page 331, testimony of Colonel Sumpter Smith, Chairman, Interdepartmental Engineering Commission in charge of the Development and Construction of DCA).

"2. Supplemental Appropriations Bills, 85th Congress, Second Session. Hearings on H.R. 2221, page 7, Construction and Development, Additional Washington Airport, 18 July 1958.

" 'Hangars and shops will be built on a self-amortizing basis under agreement with individual airlines.'

"3. FAA Budget Estimates—Submission to Congress 1962, Volume II, page 1513.

" 'The original construction program did not include funds for the Government's development of the hangar and industrial area where private capital is expected to finance the construction of buildings they will occupy.'

"4. Independent Offices Appropriations, 1963 Senate Subcommittee on Appropriations, pages 510–511.

" 'Mr. Hobbs. (Referring to Dulles) "We have not provided a hangar, based on past administrative philosophy, that the airlines would build their own hangars." '

" 'Mr. Halaby. "This Committee, last year had before it a request for a four-bay hangar, I believe, at $6 million. The House approved that hangar, and this Committee knocked it out and admonished me to press the airlines to build their own hangars. We have done that." '

"5. Senate Report No. 1270, 81st Congress, 2nd Session, Calendar No. 1278 on S. 456, at page 6, which states:

" 'The provisions of Section 5 and 6, limiting the length of contracts made thereunder to 10 years is, generally speaking desirable. However, if the lease involved construction of a permanent building, such as an office building, hotel, or similar facility by the lessee, the limitation of 10 years would prohibit and probably defeat successful negotiations in this connection * * *. To avoid these difficulties, we recommend that the last sentence of Section 6 be stricken and the following substituted therefor: "No such contract, except contracts involving the construction of permanent buildings or facilities, shall extend for a period of longer than 10 years * * *." ' "

"6. Statement of G. Ward Hobbs relating to H.R. 3126 and 3127 dealing with airport contracts, before the House Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Aeronautics, 29 October 1963.

" 'It seems to us that Congress meant to authorize the Agency to permit tenants to construct improvements at Dulles Interna-

tional Airport. And, at Washington National Airport, Congress specifically authorized such an agreement between the Agency and a restaurant concessionaire who wanted a long-term lease to amortize a substantial investment in improvements to Government property. On these bases we think there is not much question that we have this authority.' "

In connection with your first question there has not been overlooked the provisions of section 321 of the Economy Act of June 30, 1932, 47 Stat. 412, 40 U.S.C. 303(b) which are as follows:

"Except as otherwise specifically provided by law, the leasing of buildings and properties of the United States shall be for a money consideration only, and there shall not be included in the lease any provision for the alteration, repair, or improvement of such buildings or properties as a part of the consideration for the rental to be paid for the use and occupation of the same. The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts."

While the act of June 29, 1940, 54 Stat. 686, which provided for the administration of the Washington National Airport, does not specifically provide that leases at the airport may be made for other than a money consideration, section 3 of that act, as indicated in the above comments of the Administrator, authorizes the Administrator to lease, upon such terms as he may deem proper, space or property within or upon the airport for purposes essential or appropriate to the operation of the airport.

In view of such provisions of section 3, together with the matters pointed out by the Administrator which indicate that the Congress has been aware of such leasing practices by FAA and its predecessor agency, we see no basis to now question the authority of FAA to permit air carriers and concessionaires to construct facilities at Washington National Airport.

"2. The proposed modernization plan calls for the expenditure of $157 million, of which $26 million is to be contributed by the federal government. That federal share will be spent for construction of new roadways and improvement of utilities necessary to sustain the expanded terminal complex.

"By permitting the terminal improvements to take place first (at private expense), is the FAA not creating a *fait accompli* and more or less obligating Congress to later appropriate funds for essential, supporting facilities?"

Concerning this matter, the Administrator has advised us that—

"We are presently planning to ask Congress for the Government's share of these construction funds. The airline/concessionaire development phase is not anticipated to begin until after the funding of the Government's share since they would be investing at their own risk."

"3. Would the proposed project require approval of the Environmental Protection Agency?"

In response to this question, the Environmental Protection Agency has advised us as follows:

"The proposed project will require the preparation of a draft environmental impact statement for compliance with the *National Environmental Policy Act* of 1969. The requirement to develop an impact statement is based on the involvement of Federal agencies in the proposed modernization plan which could have significant effects on the quality of the human environment. The Environmental Protection Agency's role is to review and comment on the environmental aspects of the statement, particularly on those matters relating to air pollution, water pollution, solid waste management, radiation, pesticides and noise. We anticipate significant difficulty in any expansion of that airport, due mainly to increased congestion, noise and its location in an urban environment. Alternate means of meeting air transportation needs, such as use of other available facilities would have to be discussed, as required in the Council of Environmental Quality Guidelines.

"To answer your specific question, EPA has no authority to approve or disapprove proposed actions of another Federal agency. However, EPA comments are given considerable weight by the agency proposing the action. Should adverse comments by EPA fail to result in appropriate corrective action, the matter can be referred to the Council on Environmental Quality for resolution. In addition, the airport facilities are required to meet applicable air and water quality standards established under the *Clean Air Act and Federal Water Pollution Control Act*, respectively."

Also, the Administrator, Federal Aviation Administration, reported in this regard that the National Environmental Policy Act, Office of Management and Budget Circular A-95, and other pertinent requirements, will be observed.

"4. Does the National Capital Planning Commission have to approve the project?"

In their reply concerning this question the Executive Director of the Commission advised us that—

"Since Washington National Airport is outside of the District of Columbia, the Commission's General Counsel advises that the applicable provision of law is Section 5(a) of the National Capital Planning Act of 1952, as amended (40 U.S.C. 71d(a)) which provides in part:

" 'In order to insure the comprehensive planning and orderly development of the National Capital, each Federal and District of Columbia agency prior to the preparation of construction plans originated by such agency for proposed developments and projects . . . to be paid for in whole or in part from Federal or District funds, shall advise and consult with the Commission in the preparation by the agency of plans and programs in preliminary and successive stages which affect the plan and development of the National Capital . . . After receipt of such plans, maps, and data, it shall be the duty of the Commission to make promptly a preliminary report and recommendations to the agency or agencies concerned.'

"The Commission has defined 'preliminary and successive stages' to include budget proposals, location proposals, master plans for large installations, and preliminary and final site and building plans for individual construction projects.

"Therefore, although approval by the Commission of the modernization plan for construction of additional facilities at the Washington National Airport is not required, FAA is required to submit the plan to the Commission for review and recommendations. No such submission has been received to date."

Also, concerning this matter, the Administrator, Federal Aviation Administration, agreed that while the National Capital Planning Commission is not required to approve the project, the Administration is required to consult with the Commission and he stated that they have consulted with the Commission and will continue to work closely with the Commission throughout the project.

"5. Are there any other legal constraints on the FAA's freedom to proceed with this project?"

We are not aware of any other legal constraints concerning the modernization plan.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. BENTSEN). Under the previous order there will now be a period for the transaction of routine morning business for not to exceed 45 minutes, with Senators recognized for not to exceed 3 minutes.

NATIONAL HEART, BLOOD VESSEL, LUNG, AND BLOOD ACT OF 1972

The PRESIDING OFFICER. Under the previous agreement the Senate will now proceed to the consideration of S. 3323, the heart and lung program, and debate is limited to 20 minutes, to be equally divided between the Senator from Massachusetts (Mr. KENNEDY) and the minority leader or his designee, the Senator from Maryland (Mr. BEALL). The bill will be stated by title.

The assistant legislative clerk read as follows:

S. 3323, to amend the Public Health Service Act to enlarge the authority of the National Heart and Lung Institute in order to advance the national attack against diseases of the heart and blood vessels, the lungs and blood, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Public Welfare with an amendment to strike out all after the enacting clause and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "National Heart, Blood Vessel, Lung, and Blood Act of 1972".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) Congress finds and declares that—

(1) diseases of the heart and blood vessels collectively cause more than half of all the deaths each year in the United States and the combined effect of the disabilities and deaths from such diseases is having a major social and economic impact on the Nation;

(2) elimination of such cardiovascular diseases as significant causes of disability and death could increase the average American's life expectancy by about eleven years and could provide for annual savings to the economy in lost wages, productivity, and costs of medical care of more than $30,000,000,000 per year;

(3) chronic lung diseases have been gaining steadily in recent years as important causes of disability and death, with emphysema alone being the fastest rising cause of death in the United States;

(4) chronic respiratory diseases affect an estimated ten million Americans, emphysema an estimated one million, chronic bronchitis an estimated four million, and asthma an estimated five million;

(5) thrombosis (the formation of blood clots in the vessels) may cause, directly or in combination with other problems, many deaths and disabilities from heart disease and stroke which can now be prevented;

(6) blood and blood products are essential human resources whose value in saving life and promoting health cannot be assessed in terms of dollars;

(7) the provision of prompt and effective emergency medical services utilizing t the fullest extent possible, advances in transportation and communications and other electronic systems and specially trained professional and paraprofessional health care personnel can reduce substantially the number of fatalities and severe disabilities due

to critical illnesses in connection with heart, blood vessel, lung, and blood diseases; and

(8) the greatest potential for advancement against diseases of the heart and blood vessels, the lungs, and blood lies in the National Heart and Lung Institute of the National Institutes of Health whose research institutes have brought into being the most productive scientific community centered upon health and disease that the world has ever known.

(b) It is the purpose of this Act to enlarge the authority of the National Heart and Lung Institute in order to advance the national attack upon the diseases of the heart and blood vessels, the lungs, and blood.

HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASES PROGRAMS

SEC. 3. Part B of title IV of the Public Health Service Act is amended (1) by redesignating section 413 as section 419A, (2) by redesignating section 414 as section 418, and (3) by adding after section 412 the following new sections:

"NATIONAL HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASE PROGRAM

"SEC. 413. (a) The Director of the Institute, with the advice of the Council, shall within one hundred and eighty days after the effective date of this section, develop a plan for a heart, blood vessel, lung, and blood disease program (hereafter in this part referred to as the 'program') to expand, intensify, and coordinate the activities of the Institute respecting such diseases (including its activities under section 412). The program shall provide for—

"(1) Investigation into the epidemiology, etiology, and prevention of all forms and aspects of cardiovascular, lung, and blood diseases, including investigations into the social, environmental, behavioral, nutritional, biological, and genetic determinants and influences involved in the epidemiology, etiology, and prevention of such diseases;

"(2) studies and research into the basic biological processes and mechanisms involved in the underlying normal and abnormal cardiovascular, pulmonary, and blood phenomena;

"(3) research into the development, trial, and evaluation of techniques, drugs, and devices used in, and approaches to, the diagnosis, prevention, and treatment (including emergency medical service) of cardiovascular and pulmonary diseases and the rehabilitation of patients suffering from such diseases;

"(4) establishment of programs that will focus and apply scientific and technological efforts involving biological, physical, and engineering sciences to all facets of cardiovascular, pulmonary, and other related diseases with emphasis on refinement, development, and evaluation of technological devices that will assist, replace or monitor vital organs and improve instrumentation for detection, diagnosis, and treatment of these diseases;

"(5) establishment of programs and centers for the conduct and direction of field studies, large-scale testing and evaluation, and demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches (including emergency medical services) to cardiovascular and pulmonary diseases;

"(6) studies and research into blood diseases (such as sickle cell anemia and hemophilia) and blood, its uses for clinical purposes and all aspects of the management of its resources in this country, including the collection, preservation, fractionalization, and distribution of it and its products;

"(7) the education and training of scientists, clinicians, and educators in fields and specialties requisite to the conduct of programs respecting cardiovascular, pulmonary, and blood diseases;

"(8) public and professional education relating to all aspects of cardiovascular, pulmonary, and blood diseases and the use of blood and blood products and the management of blood resources;

"(9) establishment of programs and centers for study and research into cardiovascular, pulmonary, and blood diseases of children (including cystic fibrosis, hyalin membrane, and hemolytic and hemophilic diseases) and for the development and demonstration of diagnostic, treatment, and preventive approaches to these diseases; and

"(10) establishment of programs or study, research, development, demonstrations, and evaluation of emergency medical services for people who sustain critical illnesses in connection with heart, blood vessel, lung or blood diseases which programs shall include the training of paraprofessionals in emergency treatment procedures, and in the utilization and operation of emergency medical equipment, the development and operation of mobile critical care units (including helicopters and other airborne units where appropriate), and radio and telecommunications, other communications and electronic monitoring systems, the coordination with other community services and agencies in the joint use of all forms of emergency vehicles, communications systems, and other appropriate services.

"(b) (1) The plan required by subsection (a) of this section shall be transmitted to the Congress and shall set out the Institute's staff requirements to carry out the program and recommendations for appropriations for the program.

"(2) The Director of the Institute shall, as soon as practicable after the end of each calendar year, prepare in consultation with the Council and submit to the President for transmittal to the Congress a report on the activities, progress, and accomplishments under the program during the preceding calendar year and a plan for the program during the next five years.

"(c) In carrying out the program, the Director of the Institute, after consultation with the Council and without regard to any other provisions of this Act, may—

"(1) if authorized by the Council, obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of such service) the services of not more than fifty experts or consultants who have scientific or professional qualifications;

"(2) acquire, construct, improve, repair, operate, and maintain cardiovascular and pulmonary disease centers, laboratories, research, training, and other necessary facilities and equipment, and related accommodations as may be necessary, and such other real or personal property (including patents) as the Director deems necessary; and acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years; and

"(3) enter into such contracts, leases, cooperative agreements, or other transactions, without regard to sections 3648 and 3709 of the Revised Statutes of the United States (31 U.S.C. 529, 41 U.S.C. 5), as may be necessary in the conduct of his functions, with any public agency, or with any person, firm, association, corporation, or educational institution.

"HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASE PREVENTION AND CONTROL PROGRAMS

"SEC. 414. (a) The Director of the Institute, under policies established by the Director of the National Institutes of Health and after consultation with the Council, shall establish programs as necessary for cooperation with other Federal health agencies, State, local, and regional public health agencies, and nonprofit private health agencies in the diagnosis, prevention, and treatment (including emergency medical servics) of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases of children.

"(b) (1) The Director of the Heart and Lung Institute is authorized to establish ten model cardiovascular disease prevention clinics throughout the United States within the framework of existing programs. The purpose of such clinics shall be—

"(A) to develop improved methods of detecting high risk individuals;

"(B) to develop improved methods of intervention against high risk factors;

"(C) to develop highly skilled manpower in cardiovascular disease prevention; and

"(D) to develop improved methods of providing emergency medical services."

"(2) Such clinics shall be served by a central coordinating unit that shall be responsible for the development of standardized procedures for diagnosis, treatment, and data collection in relation to cardiovascular disease.

"(c) There are authorized to be appropriated to carry out this section $30,000,000 for the fiscal year ending June 30, 1973, $40,000,000 for the fiscal year ending June 30, 1974, and $50,000,000 for the fiscal year ending June 30, 1975.

"NATIONAL BASIC AND CLINICAL RESEARCH AND DEMONSTRATION CENTERS FOR CARDIOVASCULAR AND PULMONARY DISEASES

"SEC. 415. (a) The Director of the Institute may provide for the development of—

"(1) fifteen new centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic and treatment methods (including emergency medical services) for cardiovascular diseases; and

"(2) fifteen new centers for basic and clinical research into, training in, and demonstration of advanced diagnostic and treatment methods (including emergency medical services) for chronic pulmonary diseases of adults and children (including but not limited to bronchitis, emphysema, asthma, and cystic fibrosis and other pulmonary diseases of children).

Centers developed under this subsection may be supported under subsection (b) or under any other applicable provision of law.

"(b) The Director of the Institute, under policies established by the Director of the National Institutes of Health and after consultation with the Council, may enter into cooperative agreements with public or nonprofit private agencies or institutions to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for, existing or new centers (including centers established under subsection (a)) for clinical research into, training in, and demonstration of advanced diagnostic and treatment methods for cardiovascular and chronic pulmonary diseases. Funds paid to centers under cooperative agreements under this subsection may be used for—

"(1) construction, notwithstanding section 405,

"(2) staffing and other basic operating costs, including such patient care costs as are required for research,

"(3) training, including training for allied health professions personnel, and

"(4) demonstration purposes.

The aggregate of payments (other than payments for construction) made to any center under such an agreement may not exceed $5,000,000 in any year. Support of a center under this subsection may be for a period of not to exceed five years and may be extended by the Director of the Institute

for additional periods of not more than five years each, after review of the operations of such center by an appropriate scientific review group established by the Director.

"INTERAGENCY TECHNICAL COMMITTEE AND OFFICE OF HEART AND LUNG HEALTH EDUCATION

"SEC. 416. (a) The Secretary shall establish an Interagency Technical Committee on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources which shall be responsible for coordinating those aspects of all Federal health programs and activities relating to diseases of the heart, blood vessels, the lung, and blood and to blood resources to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

"(b) The Director of the Institute shall serve as Chairman of the Committee and the Committee shall include representation from all Federal departments and agencies whose programs involve health functions or responsibilities as determined by the Secretary.

"(c) There is hereby established within the Department of Health, Education, and Welfare an Office of Heart and Lung Health Education which shall provide a program of heart and lung health education for public, medical, and allied health professions. Special emphasis shall be placed upon dissemination of information regarding diet, hypertension, cigarette smoking, weight control, and other factors in the prevention of arteriosclerosis, cardiovascular disease, and lung disease.

"NATIONAL HEART AND LUNG ADVISORY COUNCIL

"SEC. 417. (a) There is established in the Institute a National Heart and Lung Advisory Council to be composed of twenty-three members as follows:

"(1) The Secretary, the Director of the National Institutes of Health, the Director of the Office of Science and Technology, the chief medical officer of the Veterans' Administration (or his designee), and a medical officer designated by the Secretary of Defense shall be ex officio members of the Council.

"(2) Eighteen members appointed by the Secretary. Each of the appointed members of the Council shall be leaders in the fields of fundamental sciences, medical sciences, or public affairs. Not more than twelve of the appointed members of the Council shall be leading medical or scientific authorities who are skilled in the sciences relating to disease of the heart, blood vessels, lungs, and blood, and not more than eight of the appointed members shall be representatives of the general public.

"(b)(1) Each appointed member of the Council shall be appointed for a term of four years, except that—

"(A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such terms; and

"(B) of the members first appointed after the effective date of this section, five shall be appointed for a term of four years, five shall be appointed for a term of three years, five shall be appointed for a term of two years, and three shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

"(2) A vacancy in the Council shall not affect its activities, and twelve members of the Council shall constitute a quorum.

"(3) The Council shall supersede the existing National Advisory Heart Council appointed under section 217, and the appointed members of the National Advisory Heart Council serving on the effective date of this section shall serve as additional members of the National Heart and Lung Advisory Council for the duration of their terms then existing, or for such shorter time as the Secretary may prescribe.

"(4) Members of the Council who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Council compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses; including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703, title 5, United States Code, for persons in the Government service employed intermittently.

"(c) The Chairman of the Council shall be appointed by the Secretary from among the members of the Council and shall serve as Chairman for a term of two years.

"(d) The Director of the Institute shall (1) designate a member of the staff of the Institute to act as executive secretary of the Council, and (2) make available to the Council such staff, information, and other assistance as it may require to carry out its functions.

"(e) The Council shall meet at the call of the Director of the Institute or of the Chairman, but not less often than four times a year."

AUTHORIZATION OF APPROPRIATIONS FOR PART B OF TITLE IV OF THE PUBLIC HEALTH SERVICE ACT

SEC. 4. Part B of title IV of the Public Health Service Act is amended by adding at the end thereof the following new sections:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 419B. For the purpose of carrying out this part (other than section 414), there are authorized to be appropriated $400,000,000 for the fiscal year ending June 30, 1973, $450,000,000 for the fiscal year ending June 30, 1974, and $500,000,000 for the fiscal year ending June 30, 1975, of which not less than 20 per centum of the funds appropriated under this section in each such year shall be reserved for programs in connection with diseases of the lung and not less than 20 per centum of the funds appropriated under this section in each fiscal year shall be reserved for programs in connection with diseases of blood.

"SEC. 419C. Notwithstanding any limitation on appropriations for any program or activity under section 419B of this Act or any Act authorizing appropriations for such program or activity, not to exceed 10 per centum of the amount appropriated or allocated for each fiscal year from any appropriation for the purpose of allowing the Secretary to carry out any such program or activity under section 419B of this Act may be transferred and used by the Secretary for the purpose of carrying out any other such program or activity under this part."

DIRECTOR'S AUTHORITY TO APPROVE GRANTS

SEC. 5. Section 419A of the Public Health Service Act (as so redesignated by section 3 of this Act) is amended—

(1) by striking out "grants-in-aid" in subsection (a) and inserting in lieu thereof "except as provided in subsection (c), grants-in-aid"; and

(2) by adding after subsection (b) the following new subsection:

"(c) Under procedures approved by the Director of the National Institutes of Health, the Director of the National Heart and Lung Institute may approve grants under this Act for research and training in heart, blood vessel, lung, and blood diseases—

"(1) in amounts not to exceed $35,000 after appropriate review for scientific merit but without review and recommendation by the Council, and

"(2) in amounts exceeding $35,000 after appropriate review for scientific merit and recommendation for approval by the Council."

CONFORMING AMENDMENTS TO PART B OF TITLE IV OF THE PUBLIC SERVICE ACT

SEC. 6 (a) Section 411 of the Public Health Service Act is amended by striking out "National Heart Institute" and inserting in lieu thereof "National Heart and Lung Institute".

(b) Section 412 of such Act is amended—

(1) by striking out "heart" each place it occurs (except in the headings) and inserting in lieu thereof "heart, blood vessel, lung, and blood";

(2) by striking out "Surgeon General" and inserting in lieu thereof "Secretary";

(3) by striking out "National Advisory Heart Council" and inserting in lieu thereof "National Heart and Lung Advisory Council";

(4) by redesignating paragraphs (a), (b), (c), (d), (e), (f), and (g) as paragraphs (1), (2), (3), (4), (5), (6), and (7), respectively; and

(5) by amending the section heading to read as follows:

"RESEARCH AND TRAINING IN DISEASES OF THE HEART, BLOOD VESSELS, LUNG, AND BLOOD"

(c) Section 418 of such Act (as so redesignated by section 3 of this Act) is amended—

(1) by inserting "(a)" immediately after "SEC. 418." and by adding at the end thereof the following new subsection:

"(b)(1) The Council shall advise and assist the Director of the Institute with respect to the program established under section 413. The Council may hold such hearings, take such testimony, and sit and act at such times and places, as the Council deems advisable to investigate programs and activities of the program.

"(2) The Council shall submit a report to the President for transmittal to the Congress not later than January 31 of each year on the progress of the program toward the accomplishment of its objectives."

(2) by striking out "Surgeon General" each place it occurs (except paragraph (f)) and inserting in lieu thereof "Secretary";

(3) by striking out 'heart" each place it occurs and inserting in lieu thereof "heart, blood vessel, lung, and blood";

(4) by striking out "Surgeon General" in paragraph (f) and inserting in lieu thereof "Secretary, the Director of the National Institutes of Health, and the Director of the National Heart and Lung"; and

(5) by redesignating paragraphs (a), (b), (c), (d), (e), and (f) as paragraphs (1), (2), (3), (4), (5), and (6), respectively.

(d) Section 419A of such Act (as so redesignated by section 3 of this Act) is amended—

(1) in subsection (a), by (A) striking out "Surgeon General" and inserting in lieu thereof "Secretary", and (B) striking out "heart" and inserting in lieu thereof "heart, blood vessel, lung, and blood"; and

(2) in subsection (b), by (A) striking out "The Surgeon General shall recommend to the Secretary acceptance of conditional gifts, pursuant to section 501," and inserting in lieu thereof "The Secretary may, in accordance with section 501, accept conditional gifts", and (B) striking out "heart" and inserting in lieu thereof "heart, blood vessel, lung, and blood".

(e) The heading for part B of such Act is amended to read as follows:

"PART B—NATIONAL HEART AND LUNG INSTITUTES"

CONFORMING AMENDMENTS TO OTHER PROVISIONS OF THE PUBLIC HEALTH SERVICE ACT

SEC. 7. (a) Section 217 of such Act is amended—

(1) by striking out "the National Advisory

Heart Council," each place it occurs in subsection (a);

(2) by striking out "heart diseases," in subsection (a) and by striking out "heart," in subsection (b).

(b) Sections 301(d) and 301(i) of such Act are each amended by striking out "National Advisory Heart Council" and inserting in lieu thereof "National Heart and Lung Advisory Council".

REPORT TO CONGRESS

SEC. 8. The Secretary of Health, Education, and Welfare shall carry out a review of all administrative processes under which the national heart, blood vessel, lung, and blood disease program, established under part B of title IV of the Public Health Service Act, will operate, including the processes of advisory council and peer group reviews, in order to assure the most expeditious accomplishment of the objectives of the program. Within one year of the date of enactment of this Act, the Secretary shall submit a report to the Congress of the findings of such review and the actions taken to facilitate the conduct of the program, together with recommendations for any needed legislative changes.

EFFECTIVE DATE

SEC. 9. This Act and the amendments made by this Act shall take effect sixty days after the date of enactment of this Act or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 5 minutes.

Mr. KENNEDY. Mr. President, it is a distinct pleasure and privilege for me, as chairman of the Subcommittee on Health, to bring before the Senate this morning S. 3323, the National Heart, Blood Vessel, Lung, and Blood Act of 1972.

Today is a special day, Mr. President. This is World Heart Day. At this very moment in the auditorium of the Smithsonian Institution, a major press conference is being held at which the latest advances in respect to heart disease are being discussed. At that press conference, Harriet P. Dustan, M.D., vice chairman of the research division of the Cleveland Clinic, is discussing the latest advances in hypertension or high blood pressure. Also, Dr. Forrest Adams, past president of the American College of Cardiology, is discussing the latest advances in pediatric cardiology. Dr. Theodore Cooper, the Director of the National Heart and Lung Institute, is giving a report on the latest findings regarding hardening of the arteries, or arteriosclerosis. And Michael Debakey, M.D., the president of the Baylor College of Medicine in Houston, is reporting on the latest advances in cardiovascular surgery. The swift passage of this legislation, Mr. President, will assist all of those in this Nation who are devoting their lives to combating these dread diseases.

Mr. President, diseases of the heart and blood vessels collectively cause more than half of all the deaths each year in the United States. If these diseases could be eliminated, the average American's life expectancy would be increased by about 11 years. The savings to the country in terms of lost wages and economic productivity would amount to more than $30 billion each year. Chronic lung diseases have been rising in America at an alarmingly rapid rate. In point of fact, emphysema is the fastest rising cause of death in the United States today. Three types of cardiovascular disease—heart attacks, strokes, and peripheral vascular disease—have reached epidemic proportions in this country. Approximately 1.2 million Americans suffer heart attacks each year. Of these heart attack victims, over 500,000 die, and half of those die before they can be reached by medical assistance. If this rate continues, more than 12 million Americans will have a heart attack within the next 10 years. Stroke, another of the cardiovascular diseases, kills more than 200,000 Americans each year. More than 150,000 Americans are afflicted each year by peripheral vascular disease, which disables its victims and causes much human suffering.

Mr. President, the committee's bill is intended to launch a massive program to combat these diseases and others. The committee's report which accompanies the bill describes the program authorized by the bill in great detail. I commend it to my colleagues. However, Mr. President, I would like to take this opportunity to describe briefly the major aspects covered by the bill.

The heart of this bill, Mr. President, is a 10-point program to be carried out by the National Heart and Lung Institute at the National Institutes of Health. That 10-point program includes: First. Research into the causes and methods for prevention of all forms of heart, lung, and blood diseases. Second. Studies and research into basic biological processes involved in understanding how the heart and the lungs function. Third. Research into the development, trial and evaluation of drugs for use in the diagnosis, treatment and prevention of these diseases. Fourth. Establishment of programs centers for the conduct of field studies and large-scale testing and evaluation of diagnostic and treatment techniques for these diseases. Fifth. Establishment of programs to develop new and innovative technological devices for the monitoring of the body's vital organs. Sixth. Studies and research into blood diseases such as sickle cell anemia and hemophilia. Seventh. Programs for the education and training of scientists, clinicians and educators to assure the Nation of a continuing supply of highly trained manpower. Eighth. Establishment of public and professional educational programs relating to all aspects of heart and lung and blood diseases, focusing on such things as diet and smoking. Ninth. Establishment of programs and centers for study and research into these diseases as they affect children, including particularly studies centering on cystic fibrosis, hyaline membrane, and hemolytic disease, with a view toward the development of preventive approaches to these diseases. Tenth. Establishment of programs to provide emergency medical assistance for persons who are stricken by any of these diseases.

Mr. President, the bill also authorizes heart, blood vessel, lung, and blood disease prevention and control programs. These prevention and control programs will focus on applying as rapidly as possible new knowledge as it is developed in respect to combating diseases. In that regard, the bill authorizes the establishment of 10 model heart disease prevention clinics throughout the United States. In order to carry out these prevention and control programs, the bill authorizes $120 million to be expended over a 3-year period.

The bill also authorizes the establishment of 30 new centers for basic and clinical research into these diseases—15 of which are to be focused on heart disease and 15 of which are to be focused on diseases of the lungs.

The bill also establishes within the Department of Health, Education, and Welfare an Office of Heart and Lung Health Education. It will be the responsibility of that Office, Mr. President, to work with other governmental and nongovernmental organizations, such as the American Heart Association, to assure that the American people are fully informed regarding the best ways to minimize the risk of contracting one of these diseases. For example, it is quite clear that individuals who watch their weight, engage in moderate physical exercise, and do not smoke excessively have a much lower risk of being struck down by heart attack.

In order to assure that the program authorized by the bill will be of the highest scientific quality, the bill authorizes the establishment of a 23-member National Heart and Lung Advisory Council. It will be the duty of this council to oversee the operation of the program and to recommend approval in respect to major requests for funds under the program.

Finally, Mr. President, the bill authorizes, in addition to the funds specifically reserved for the prevention and control programs, $1,350 million over a 3-year period in order to carry out the purposes of the bill. In addition, at least 20 percent of the funds appropriated in each year are reserved for programs to combat lung disease and an additional 20 percent of the funds are reserved for programs to combat diseases of the blood.

Mr. President, it would not have been possible for the Senate to have an opportunity to vote on this bill today. Less than 1 month after its introduction into the Senate, had it not been for the magnificent cooperation all Members of the committee have shown during the consideration of this legislation. I specifically want to call to my colleagues' attention that the bill S. 3046, introduced by Senator MONDALE, a distinguished member of the committee, has also been considered. Senator MONDALE wanted to be here today. However, he is out of town on official business of the Senate. Several of the key features of the Mondale bill are included in the legislation now pending before the Senate. Additionally, the bill S. 3201, introduced by Senator SCHWEIKER, the distinguished ranking minority member of the Health Subcommittee, was also considered. The key features of that bill are also included in the bill now before the Senate I particularly appreciate

the willingness of Senators MONDALE and SCHWEIKER to assist us in bringing this legislation to the floor so expeditiously.

Mr. President, the passage of this legislation will set in motion a series of events which ultimately will substantially reduce the great burden of suffering and death which these dread diseases exact on the American people.

Finally, Mr. President, I want to express my thanks to the staff of the Senate Labor Committee who worked so diligently on this legislation—Mr. Jay Cutler, the minority counsel of the committee, and Mr. LeRoy Goldman, the staff director of the Senate Health Suboomittee.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. KENNEDY. Mr. President, there has been extraordinary progress, as we will see, as a result of the World Health Organization Conference being held today to make some extremely important and significant gains in the entire area of heart disease.

I commend the members of the Subcommittee on Health and the organizations that have been so helpful and useful in the development of this legislation. I think it is a sound piece of legislation that can move this country down the road a long way to meeting the problems of heart and lung disease in this country.

Mr. President, I reserve the remainder of my time.

Mr. BEALL. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 minutes.

Mr. BEALL. Mr. President, as a cosponsor of this legislation I rise to support this important bill.

At the outset I wish to congratulate the chairman of the Subcommittee on Health of the Committee on Labor and Public Welfare, the Senator from Massachusetts (Mr. KENNEDY) for providing the leadership necessary in order to get this very important bill out of committee and onto the floor of the Senate for what surely will be favorable action this morning. He has relentlessly pursued this matter and because of his efforts we are able to vote on the bill today.

I am happy to note that the bill comes to the floor today with the unanimous recommendation of the Committee on Labor and Public Welfare, and it has the support of the administration. On January 20, 1972, and March 2, 1972, the President proposed that we should proceed to create panels to examine causes of heart disease. Mr. Merlin Duval, who is Assistant Secretary for Health and Scientific Affairs of HEW, testified that we should move ahead with this particular bill. It is most appropriate that this measure be before the Senate on World Heart Day.

Mr. President, S. 3323, if enacted, will mark the second year in a row that the Congress has decided to target a research area. Last year, the focus was cancer. I believe the following statistics dramatize the need for an expanded national attack on the diseases of the heart, blood vessels and lungs:

Heart and blood diseases, the major cause of death in the Nation, kill more than 1 million people each year. Cardiovascular diseases are responsible for 54.1 percent of all deaths in the United States; 600,000 Americans are killed annually by heart attacks and it is estimated that 12 million Americans will be claimed by such attacks over the next decade unless something is done about it.

Lung diseases are also an important cause of death and disability among the American citizens: 10 million Americans are estimated to be effected by chronic respiratory diseases, and emphysema is the fastest rising cause of death in the Nation.

Thrombosis, or the formation of blood clots, takes an enormous toll. These strokes hit 200,000 Americans each year often resulting in death or disability.

Thus, Mr. President the above grim statistics reveal that these diseases cost the Nation dearly in terms of premature death and disability. It has been estimated that if we could eliminate cardiovascular diseases as a significant cause of death and disability, the average American's lifespan would be increased by 11 years and some $30 billion would be saved to the economy in terms of wages lost, productivity, and medical costs.

S. 3323 would:

First, authorizes $1.47 billion over a 3-year period to the National Heart and Lung Institute in order to advance a national attack on the diseases of the heart and blood vessels, lungs, and the blood;

Second, requires the Director of the Institute within 180 days after enactment to develop a program to expand, intensify and coordinate the Institute's activities respecting such diseases;

Third, authorizes 10 model cardiovascular disease prevention clinics to improve detection and provide better means of intervention among high risk individuals and would foster the development of needed skilled manpower in this area;

Fourth, authorizes 30 basic and clinical research and demonstration centers for cardiovascular and pulmonary diseases.

Fifth, provides for an interagency technical committee to coordinate all aspects of the Federal health programs related to these diseases;

Sixth, establishes within the Department of Health, Education, and Welfare an Office of Heart and Lung Education to provide for a heart and pulmonary health education program;

Seventh, creates an advisory committee; and

Eighth, gives special emphasis to emergency care and services.

Mr. President, I am particularly pleased that the bill will place emphasis on emergency care services. We simply have the technology to do much better in this area than we are doing today. I previously spoke when I introduced S. 3329, a bill to establish a National Institute of Health Care Delivery of the outstanding trauma center at the University of Maryland. Maryland already has three helicopters, and with four or five more, the State could be a model for the country. Incidentally, these Maryland helicopters have landed even in citizens' backyards to pick up and rush heart attack victims to the appropriate treatment centers.

Also, Montgomery County in my State has had outstanding success with their heartmobile. Using rescue squad personnel closely tied by radio communiciation to physicians, have been able to respond to citizens' calls who, in the words of Dr. Samuel Fox, president of the American College of Cardiology and professor of medicine at George Washington University before the Health Subcommittee, "having essentially died at their homes, at their offices or on the streets, and then resuscitated, transported to coronary care units in." Many citizens saved by the heartmobile, now in their second year, following their attack, are living productive and useful lives. Despite the program's success, funds to support and train the necessary personnel have been hard to come by.

I ask unanimous consent that the language from the Senate report dealing with emergency services be printed at this point in the RECORD.

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

6. The Committee considers the adequate provision of emergency medical services of primary importance in any program established to develop methods of diagnosis. The bill as reported amends the provision requiring the Institute Director to develop a plan for heart, blood vessel, lung and blood disease programs to include the development of emergency medical services both in the programs for research and in the establishment of programs in centers for the demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches to cardiovascular and pulmonary diseases. Similarly, the provisions establishing the preventive and control program are amended to stress coordination of emergency medical services programs. While specific language including related research in emergency medical services was not included in the sections of the bill requiring research into medical devices, the Committee believes that much potential exists in the field of biomedical engineering for the development of devices which can be utilized at the scene of an emergency and in transport vehicles. The Committee also believes that consideration of emergency medical services is an appropriate subject for study by the Interagency Technical Committee established by the proposed new section 416 of the Public Health Service Act. Already effective pilot programs have been established through the joint efforts of the Department of Health, Education and Welfare, the Department of Transportation, and the Department of Defense in the development of emergency medical services. This mode of emergency transport has proven particularly effective in remote areas where distance from adequate acute care treatment has been a major obstacle to the provision of effective emergency medical care. The Committee urges that in the planning and development of transportation services and systems for the provision of emergency medical services, that this be done in coordination with the Department of Transportation and other appropriate Federal, State and local governmental agencies.

Mr. BEALL. Mr. President, it would be great if we could say that our actions last year in enacting the cancer bill and our actions today on S. 3323, a bill to accelerate our battle against heart, blood, and pulmonary diseases, will be the one-two punch that will KO America's No. 1 and No. 2 health enemies. We know that we cannot make such a promise, for the pursuit of these diseases will take time, dedicated men and women, and adequate resources. The action by the Congress today will help provide the needed resources. The National Institutes of Health, which I am pleased is located in Maryland, has made biomedical research in the Nation preeminent in the world, and I am sure that its dedicated men and women as well as their scientific colleagues at other distinguished State and national institutions and industries, will relentlessly search for clues and answers for these diseases.

Again, I am pleased to strongly support this legislation and I hope that the House will take early and favorable action so that we may reverse these staggering and sad statistics.

While, Mr. President, the legislation cannot offer instant success, hopefully it will hasten the day when these diseases will no longer occupy their position of public health enemies Nos. 1 and 2. For this, millions of Americans would be grateful, many lives will be extended, and much pain and suffering will be alleviated.

Mr. President, I ask unanimous consent that the remarks of the Senator from New York (Mr. JAVITS), who is the ranking Republican member of the Committee on Labor and Public Welfare, and who is absent today on business, be inserted at this point in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

STATEMENT BY SENATOR JAVITS

As one who has been referred to as the father of the National Heart Institute—having introduced on June 9, 1947, H.R. 3762, joined by then Senator, now Representative Pepper of Florida, which provided for the establishment of the Heart Institute within NIH—I am particularly pleased to strongly endorse and encourage the prompt passage of S. 3323, "The National Heart, Blood Vessel, Lung and Blood Act of 1972", which I cosponsored with Senator Kennedy.

Today, April 7, 1972, has been designated by the World Health Organization as World Heart Day, and I believe it would be a most fitting tribute for the Senate to pass on this day the significant legislation now before us.

Heart, blood vessels, lung and blood diseases are major national health problems which the President himself has characterized as "deeply disturbing" when in his state of the Union address of this year he said "It is deeply disturbing to realize that, largely because of heart disease, the mortality rate for men under the age of 55 is about twice as great in the United States as it is, for example, in some Scandinavian countries."

The President also stated his intention, which he reaffirmed in his health message of March 2, "to assign a panel of distinguished professional experts to guide us in determining why heart disease is so prevalent and what we should be doing to combat it." In testifying before the Senate, Dr. Merlin K. Duval, Assistant Secretary for Health and Scientific Affairs, Department of Health, Education and Welfare, said: "The President, in both his state of the Union message to Congress on Health this year, has stressed his commitment. One of the bills you have before you, S. 3323, captures the concerns we have and, as we understand them, the concerns of the scientific community outside the Government. This Committee has highlighted most of the important matters that need resolution."

I believe this bill will now permit us to launch a more effective effort against heart, blood vessel, lung and blood diseases in accordance with the President's commitment to give, and I quote his State of the Union Address: "increased attention to the fight against diseases of the heart, blood vessels and lungs, which presently account for more than half of all the deaths in this country."

The legislation which we are considering today is extremely important because the heart, blood vessel, lung, and blood diseases certainly have reached epidemic proportions in this country.

Heart and blood vessel diseases are the major causes of death in the United States. They kill more than 1 million people each year. Cardiovascular disease is responsible for 54.1 percent of all deaths in the United States, killing old and young alike.

We must recognize the serious proportion of cardiovascular and pulmonary diseases, and their threatening effect on the health and well-being of the American people—the victims who are directly afflicted by these diseases and their families. It is imperative that we broaden the scope of the present National Heart and Lung Institute to include the related diseases of the heart, blood vessels, lung and blood.

Mr. President, when I testified in support of my bill, H.R. 3762, before the Committee on Labor and Public Welfare on April 8, 1948, almost 24 years ago to the day, I cited a statistic which regrettably is as true now as it was then about heart disease: "It is the number 1 killer."

Since I have been concerned actively with the role of the National Heart Institute and I believe that with the expanded authorization that this bill provides, the Institute could become an even more effective means of combating this number 1 killer of the American people.

Mr. SCHWEIKER. Mr. President, the bill before the Senate today provides a legislative foundation for an effective, expanded program to deal with the Nation's No. 1 health problem, cardiovascular disease. The President of the United States in his state of the Union address this year stated:

We will be giving increased attention to the fight against diseases of the heart, blood vessels and lungs, which presently account for more than half of all the deaths in this country. It is deeply disturbing to realize that, largely because of heart disease, the mortality rate for men under the age of 55 is about twice as great in the United States as it is, for example, in some Scandinavian countries.

In addition, I would point out another statistic that is both depressing and yet promising. Six times more people per unit of population are killed in this country by heart disease than in Japan. Our mortality rate for heart disease is six times higher than the rate for Japan. This should alarm us to the danger and yet point out, perhaps, that we can change the rather sad statistic.

In his testimony before the Health Subcommittee of the Senate Committee on Labor and Public Welfare Dr. Merlin K. Duval, Assistant Secretary for Health and Scientific Affairs, Department of Health, Education, and Welfare said:

The Administration agrees with the essential goals contained in a number of bills before the Committee. The President, in both his state of the Union message and Message to Congress on Health this year, has stressed his commitment.

Thus, the Congress and the President have joined in a commitment to expand and accelerate the national effort to attack cardiovascular disease.

Mr. President, I want to commend the chairman of the Senate Health Subcommittee, the distinguished Senator from Massachusetts (Mr. KENNEDY) for his leadership in bringing this legislation to the Senate today. This bill represents a combination of the best features of his own bill, which I was pleased to cosponsor with a number of our Senate colleagues, a bill which I was pleased to introduce, and legislation proposed by the distinguished Senator from Minnesota (Mr. MONDALE). Also, the staff of the Senate Health Subcommittee should be commended for its effort and skill in preparing the legislation and the report for the committee in what may be record time inasmuch as the hearing on the legislation was conducted only 2 weeks ago.

Less than 1 year ago the National Heart and Lung Institute Task Force on Arteriosclerosis published its recommendations as a result of a 15-month study to develop a long-range plan to combat heart disease. Its primary recommendations had to do with developing new national resources to combat the killer. They recognized that over the past 20 years the American public invested $2 billion to study this problem and that a lot of new information had been found with this research. It was now timely to bring this information to the public in a way that could be practically introduced into the American practice of medicine and into the American way of life. Therefore, their recommendations were to develop a new program of public education to make the public aware of what they could do for themselves; to make a new program of prevention which would center around new clinics to show the people how they could use this information and then develop a new series of national centers for research in which we could begin to bring together more efficiently some of the expertise for studying the total problem, which is fragmented in our national system today.

Mr. President, I feel it should be made clear that the American public should not expect, as a result of this legislation, that we will have an instant cure or end to cardiovascular diseases and deaths. Congress certainly cannot legislate remedies. However, the American public can expect some practical payoffs to the moneys we are investing in heart and lung research. The state of the art today is such we can utilize existing knowledge and help a vast number of people. I think it is very important that we emphasize programs where the most people can be helped in

the shortest amount of time. Although much new and important information is being developed in the Nation's research laboratories, it is time to reduce the period of time it takes to transform a research development into a productive test and subsequently into practical clinical use for the people who need it, the growing number of victims of cardiovascular disease. We should bring our resources to bear first where we know we can save lives. We continually have a problem of spending priorities. Obviously, we must expand the research effort but our focus should remain first on the practical application of existing technology.

Mr. President, the pending bill in its charge to the Federal Government to prepare a plan to expand, intensify, and coordinate the Nation's program against cardiovascular disease provides the necessary balance between research and application and establishes realistic priorities. I urge its passage so that the Congress and the President can reaffirm its commitment to deal with America's No. 1 killer.

TO HALT THE EPIDEMIC OF HEART, BLOOD, AND LUNG DISEASES

Mr. HUMPHREY. Mr. President, I strongly support the National Heart, Blood Vessel, Lung, and Blood Act of 1972, S. 3323, and urge its adoption today by the Senate. As a joint sponsor of original legislation to launch a national program on the prevention and cure of critical and pervasive cardiovascular and pulmonary diseases and other heart and blood disorders, I am determined that an intensive research and education effort, through the National Heart and Lung Institute, be directed toward ending the nightmare of crippled lives and sudden death brought by these diseases to millions of American families.

Every year about a million persons in the United States experience either a myocardial infarction or sudden coronary heart disease death. For middle-aged men, the United States has one of the highest CHD death rates in the world. Those middle-aged persons fortunate enough to recover are five times as likely to die within the next 5 years as those without a history of previous coronary disease.

Arteriosclerosis accounts for almost one-half of all deaths from all causes in the United States each year. There has been a marked increase in blood diseases—thrombosis, a substantial factor in heart attacks; sickle cell anemia, afflicting millions of black Americans; and the rising incidence of disease associated with blood transfusions in the absence of adequate precautions.

But national concern is also being focused on the increase in lung diseases, with emphysema now afflicting almost 1 million people. There are about 10 million persons in America affected by chronic respiratory conditions, causing the death of some 36,000 people each year, apart from deaths due to cancer of the lung or respiratory infections such as pneumonia or tuberculosis.

I find it greatly encouraging that $80 million are earmarked under this act in fiscal 1973 for research on diseases of the lung. In addition to the diseases already cited, I would remind the Senate of the serious incidence of pneumoconiosis, or black lung disease, among the Nation's coal miners, that was brought sharply to public attention in the course of congressional action on the Federal Coal Mine Health and Safety Act. To date, some 375,000 benefit claims have been filed under title IV of this law by miners afflicted with this life-crippling disease, or their survivors.

As in earlier legislation which I had sponsored, the Coal Mine Health and Safety Act was focused on the establishment of effective standards for miner protection from health and safety hazards. The time has come to add to these prevention measures an intensive program of research on the treatment and cure of black lung disease and associated diseases on which increased medical knowledge is now available.

But we need to get the benefits of this knowledge and of the national medical research program down to the people threatened or afflicted with this disease. It is for this reason that I strongly support legislation introduced by Senator RANDOLPH and shortly to be reported to the Senate: The Black Lung Benefits Act of 1972. This bill amends title IV of the Federal Coal Mine Health and Safety Act, to authorize $10 million for the provision of fixed and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners.

It is my strong hope that in addition to approving the National Heart, Blood Vessel, Lung, and Blood Act today, the Senate will take immediate and favorable action on the Black Lung Benefits Act. For too long the desperate health care needs of America's coal miners have been ignored, despite the fact that our economy depends heavily on their labor. Their equal right to the prevention and treatment of disease can and must now be guaranteed.

A FITTING TRIBUTE FOR WORLD HEART DAY

Mr. CRANSTON. Mr. President, testimony offered the Subcommittee on Health in its hearings on S. 3323, the proposed National Heart, Blood Vessel, Lung and Blood Act of 1972, was virtually unanimous in support of the need for increased emphasis on the critical diseases covered by this legislation, which I am proud to cosponsor.

There is probably not a family in this country which has not had a close association with the tragedies involved in these diseases. Together these diseases account for approximately one and a half million deaths each year. Over 37 million individuals suffer from either cardiovascular disease or chronic respiratory conditions.

The bill the subcommittee has developed will provide our medical community with the necessary tools to mount an effective campaign against these widely prevalent diseases. This bill will require the development of a plan by the Director of the National Heart and Lung Institute for an expanded and intensified heart, blood vessel, lung, and blood disease program; it would authorize the establishment of prevention and control programs and the establishment of 15 new centers for clinical research into cardiovascular diseases and 15 new centers for clinical research into chronic pulmonary diseases; it would expand the existing advisory council to include students of the health professions and representatives of the general public; and it would provide for the first time a separate authorization for appropriations for the National Heart and Lung Institute.

In committee, a number of amendments were adopted which I believe strengthen the provisions of the bill as introduced.

An important new mission was added to the National Heart and Lung Institute's programs as a result of an amendment offered by myself and the Senator from Vermont (Mr. STAFFORD) which amendment was further perfected in committee with the help of the ranking minority member of the Subcommittee on Health, the Senator from Pennsylvania (Mr. SCHWEIKER). This amendment would require the Institute Director to establish programs for study, research, development, demonstrations and evaluation of emergency medical services in connection with heart, blood vessel, lung or blood diseases. Many of the deaths or disabilities resulting from sudden onslaughts of these diseases can be prevented through the provision of adequate medical treatment at the time of the initial attack. I believe this is an area with a potential for alleviating many of the tragic consequences of these diseases and one which should be given major emphasis in any program to treat victims of these diseases.

Procedures must be developed to bring medical care to the victim as quickly as possible and to provide treatment immediately. The provisions included in the bill as a result of my amendment would require: First, that in the development of these programs special emphasis be placed on the training of paraprofessionals in the provision of necessary emergency treatment; second, the development of mobile critical care units; third, the development of new devices for the emergency treatment of critically ill individuals including the development of radio and telecommunications, as well as electronic monitoring systems to be utilized in transmitting patient data and other necessary information to and from the critical care unit; and fourth, the coordination of such programs with other community services and agencies in the joint use of all forms of emergency vehicles, communications systems, and additional appropriate services.

I feel one of the basic components of any program for emergency medical services is adequate training of the paraprofessional. An outstanding program has been implemented in Los Angeles County through the joint efforts of the Los Angeles Heart Association, Daniel Freeman Hospital, Centinella Valley Community Hospital, Hawthorne Community Hospital, the county of Los Angeles, and the area regional medical program.

This project focuses on prehospital care of persons with suspected heart attacks, utilizing firemen with comprehen-

sive training as paramedics to provide the emergency care. The program has developed a training curriculum which is probably one of the most comprehensive in the Nation. California law permits a fairly wide range of medical procedures for the paramedic to administer in the appropriate care of the patient with an acute heart attack. As a result, his preparation must be comprehensive and intensive. The course developed in Los Angeles by the paramedic committee appointed by the county board of supervisors consists of 290 hours, half of it in supervised clinical experience in the hospital coronary care unit, followed by regularly scheduled continuing medical education programs of up to 4 hours a month.

The chairman of the committee, Dr. Walter S. Graf, has listed the following 13 areas the paramedic must master:

A sufficient medical vocabulary to discuss a wide range of medical emergencies with a physician or nurse.

A knowledge of cardiac anatomy, physiology, and pathophysiology.

A knowledge of the clinical features of myocardial infarctions and their complications, as well as the understanding of those other disease states which may mimic the above.

A knowledge of the electrophysiology of the heart as a basis for understanding the electrocardiogram.

Arrhythmia identification and treatment.

Cardiopulmonary resuscitation.

Problems in ventilation and their management.

Indications for and techniques of defibrillation.

Facility in starting an intravenous pathway.

The use of drugs permitted by law.

The use of telemetry.

Maintenance and troubleshooting of the electronic equipment.

Techniques of history taking and physical examinations, as well as appropriate skill for reporting such data on the radio or on the proper forms.

That is a very impressive list. Besides these, experience in Los Angeles has shown that instruction in such areas as treatment for diabetic coma, insulin shock, and drug overdose as well as other critical conditions must also be provided the paramedic.

Programs such as these should be given greater emphasis if an intensified attack on the critical diseases in the jurisdiction of the new National Heart and Lung Institute is to be established. They are an integral part of any treatment program.

An additional amendment to S. 3323 which I strongly supported based on Senator MONDALE's bill (S. 3046) and which I believe will strengthen the ability of the Institute to carry out effective programs is the earmarking of no less than 20 percent of the amounts appropriated to programs in connection with diseases of the lung and no less than 20 percent to programs in connection with diseases of the blood. This budgetary procedure will insure that grants for these programs are judged on their own merits and will be given the priority consideration necessary to effect a concerted attack against lung and blood diseases.

In addition, an Office of Heart and Lung Health Education is established which will bring to the attention of the public and the health community information regarding preventive measures in the control of arteriosclerosis, cardiovascular disease, and lung disease. Much of the incidence of these diseases can be controlled through proper diet, weight control, rest, and the discouraging of cigarette smoking.

I believe this bill with the strong emphasis it places upon prevention as well as treatment will encourage the development of an effective comprehensive program for the control of heart, blood vessel, lung and blood diseases. I would like to congratulate the chairman of the subcommittee, the Senator from Massachusetts (Mr. KENNEDY) and the chairman of the full committee, the Senator from New Jersey (Mr. WILLIAMS) as well as the ranking minority member of the full committee and subcommittee (Mr. JAVITS and Mr. SCHWEIKER) respectively for the leadership they have offered in developing this important legislation.

I think it is particularly appropriate that we should adopt this bill today, which has been designated World Heart Day by the World Heart Organization and urge full support of its provisions by the Members of the Senate.

Mr. ROBERT C. BYRD. Mr. President, I rise to express my strong support for S. 3323, to enlarge the authority of the National Heart and Lung Institute in order to advance the national attack against diseases of the heart and blood vessels, the lungs, and blood.

Diseases of the heart, blood vessels, lungs, and blood rank among the most dreaded diseases in the United States. At the present time, cardiovascular diseases account for 54.1 percent of all deaths in the United Staes, killing more than 1 million people each year. The major types of cardiovascular diseases—heart attacks, strokes, and peripheral vascular diseases—strike down 1,240,000 persons annually. When we analyze that figure, we realize that diseases in this category have reached epidemic proportions.

Chronic lung diseases are also one of the major causes of disability and death in this country. A common cause of death among newborn infants is respiratory diseases syndrome—RDS—affecting 50,000 to 100,000 babies annually in the United States, and over half of those afflicted with RDS die.

Cardiovascular and pulmonary diseases can strike any of us without any advance notice. These are not only diseases of the aged; they strike both young and old alike.; In addition to the tremendous toll in human life and suffering, these diseases create a tremendous drain on our national resources. They are responsible for over half the deaths of Americans in their prime productive years of 35 to 64, and for over two-thirds of the deaths among Americans over 65. Victims who are stricken with these diseases pay out over $4 billion annually for hospital and medical expenses, while lost wages and productivity eliminated by premature cardiovascular death are estimated to exceed $40 billion per year.

I do not believe that a country with the available resources of the United States should continue to tolerate this human suffering and spiraling death toll without attempting to fight back. S. 3323 is the battle plan for mounting the attack against those diseases.

This bill requires the Director of the National Heart and Lung Institute, with the advice of the National Heart and Lung Council, to develop a plan for a comprehensive attack on all phases of these diseases. Toward this objective, it authorizes the creation of 15 centers for research, advanced diagnosis, treatment, and training in cardiovascular diseases and 15 centers for similar research on pulmonary diseases. This bill also authorizes expenditures of $430,000,000 for fiscal year 1973, $490,000,000 for fiscal year 1974, and $550,000,000 for fiscal year 1975.

As a member of the Senate Appropriations Subcommittee on Labor-HEW, I have consistently fought to secure additional funding for research on heart, lung, and stroke diseases. If this bill achieves enactment into law, I shall do my utmost to see that adequate funds to implement S. 3323 are appropriated.

Mr. BEALL. Mr. President, I yield such time as he may require to the Senator from Illinois (Mr. PERCY).

Mr. PERCY. Mr. President, I thank my colleague.

I would like to say first that I believe it is a very auspicious occasion for the Senate of the United States to be acting on the National Heart, Blood Vessel, Lung, and Blood Act of 1972 on World Heart Day.

I have been a very proud cosponsor of this bill. I think all of us in the Senate would want to commend the Senator from Massachusetts (Mr. KENNEDY) for his fine leadership on this outstanding piece of legislation.

I am pleased, indeed, that this administration has supported the bill and that the bill has had the solid support of such Republican Senators as the Senator from New York (Mr. JAVITS), the Senator from Colorado (Mr. DOMINICK), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Maryland (Mr. BEALL), and the Senator from Vermont (Mr. STAFFORD).

I think it is quite important that, in the relatively few years that I have been in the Senate, this body and the Congress of the United States have moved forward in a major way in efforts to eradicate dread diseases. I have been a strong supporter of the conquest of cancer bill and cosponsor of the national sickle cell prevention bill, both of which I think have been extremely important measures.

I think it should be pointed out that volunteer associations and organizations have done a great deal to assist Congress in finding the best way to use this country's funds and resources. It has been hard to single out any one individual, but if I were to mention one individual who has done more than anyone else in the health field, I would name

Mrs. Mary Lasker as one who has contributed more experience, energy, thought, and effort to the Senate and the House of Representatives than any other individual.

Certainly, the American Heart Association should also be commended for its outstanding leadership on this occasion.

There is only one aspect of the present bill on which I would like further clarification from our distinguished colleague from Massachusetts (Mr. KENNEDY).

On page 31 of the committee report it is pointed out that no witness who came before the committee during the hearings testified on behalf of the provisions of S. 2909. S. 2909, the National Blood Bank Act, introduced in the Senate by myself and the Senator from Indiana (Mr. HARTKE) is a companion bill to H.R. 11828, introduced in the House, with 80 cosponsors, by the very distinguished Representative from California (VICTOR V. VEYSEY), who has been a leader in this field.

I wish to point out that I did not appear personally before the Senate Health Subcommittee because I was not notified until the close of business on March 23 that hearings would be held the next morning, and I was simply unable to be there that morning because of an unavoidable conflict in scheduling. However, I did submit a prepared statement, and I think it is very important to note that we have a grave blood problem in this country.

I was pleased that the committee report on S. 3323 clearly pointed out that there should be additional hearings and testimony from expert witnesses on the provisions of S. 2909, the National Blood Bank Act.

I merely need to point to the following figures to show the critical nature of this country's blood problem. According to Dr. J. Garrott Allen of Stanford University, whom many health specialists regard as the Nation's leading expert on blood problems, blood transfusions now kill at least 3,500 Americans and medically injure another 50,000 each year. He further estimates that of every 150 patients over 40 years of age who receive blood transfusions, one dies.

It has been shown that the risk of hepatitis from commercial blood runs from 11 to 70 times greater than the risk from voluntarily donated blood. The Government's Center for Disease Control in Atlanta reports that no one knows exactly how high the transfusion hepatitis rate is because physicians often fail to report serum-hepatitis cases. The CDC estimates that the real serum-hepatitis rate could be two to 10 times Dr. Allen's estimates or 35,000 deaths and 500,000 illnesses each year. Whether it is 3,500 or 35,000 that die each year, the fact is that no one should have to die. Even one death is too many.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PERCY. Mr. President, will the Senator yield me some time?

Mr. KENNEDY. Mr. President, do I have 2 minutes remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. KENNEDY. I yield to the Senator from Illinois.

Mr. PERCY. Could the distinguished Senator enlighten the sponsors of this particular bill as to whether hearings of adequate scope and depth will be held in the reasonably near future so that we can tell the full story of this country's blood problem to the people and take the necessary action on this urgent national health problem?

Mr. KENNEDY. Let me give assurance to the Senator from Illinois that the measure which he has introduced is a matter of great importance. It is of great importance to the members of our committee. For the reasons he has outlined here, blood should be available on a voluntary basis. There should be quality standards so that persons who need blood can be assured of its quality and purity.

There are compelling reasons for legislation like that introduced by the Senator from Illinois. The Senator is correct that we have not had hearings on it up to this time. But we will have hearings, though. It is difficult for me to set a time certain for them. We now have before the committee the administration's health maintenance organization bill upon which we must act. We also have the communicable diseases bill and the product safety bill, which has been referred to our committee from the Commerce Committee with the requirement that we report back to the Senate by May 23, 1972. Also, I along with Senator RIBICOFF have introduced a bill to create a Department of Health. So we have an extremely busy agenda.

I wish I could be more specific in terms of time, but I will say to my friend from Illinois that the Hartke-Percy bill is a matter of urgency and a matter of importance. I commend the Senator for bringing it to our attention, and I give him the assurance that we will move on it just as quickly as we possibly can.

Mr. PERCY. If hearings can be held at the earliest possible and practicable time, I will certainly appreciate it. I do not quarrel at all with the subcommittee giving No. 1 priority to the No. 1 cause of death—cardiovascular diseases—and I again commend the Senator and the subcommittee for their prompt action in dealing with the National Heart, Blood Vessel, Lung and Blood Act of 1972 today.

Mr. KENNEDY. Mr. President, before yielding. I note the presence in the Chamber of my good friend and distinguished colleague, the Senator from New Hampshire (Mr. COTTON), the ranking Republican member on the Appropriations Subcommittee which deals with HEW appropriations and one of the great leaders in the Senate. He is steadfast in his support of all health programs; and in acknowledging his presence, I want to assure him that we will be knocking on his door in respect to the implementation of this legislation. And I am sure he will respond as he does in all health matters.

The PRESIDING OFFICER. All time has expired.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time be extended for 1 additional minute, for the Senator from New Hampshire to respond.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. COTTON. Mr. President, I thank the distinguished Senator from Massachusetts for his generous words. I commend him for his constant and persistent efforts in expanding our medical research programs. This is one subject upon which the Senator from Massachusetts and I are in complete agreement, and I think I can assure him that after this authorization bill is passed, our subcommittee will be unanimous in striving to make adequate appropriations to carry out the purposes of the Senator's bill.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time be extended an additional minute, and yield to the Senator from West Virginia.

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

Mr. ROBERT C. BYRD. Mr. President, I commend the distinguished Senator from Massachusetts (Mr. KENNEDY) for his leadership in bringing this bill to the Senate floor, and compliment him on his very able managership of the bill. I extend compliments likewise to the ranking minority member.

I ask the distinguished Senator from Massachusetts as to whether or not additional cosponsors are now being accepted.

Mr. KENNEDY. They will be very much welcomed.

Mr. ROBERT C. BYRD. I thank the Senator. Mr. President, I ask unanimous consent that the names of the Senator from Alabama (Mr. ALLEN), the Senator from Virginia (Mr. SPONG), the junior Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from Indiana (Mr. HARTKE), and the Senator from Minnesota (Mr. HUMPHREY) be added as cosponsors of this measure.

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

Mr. HARTKE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. HARTKE. Mr. President, I would just like to associate myself with the Senator from Illinois (Mr. PERCY) in regard to S. 2909, the National Blood Bank Act. I thank the Senator from Massachusetts for giving his attention to this matter. I know that he agrees with us that clean blood bank blood is a matter of extreme importance.

The PRESIDING OFFICER (Mr. BENTSEN). All time having expired, the question is on agreeing to the amendment in the nature of a substitute.

The amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from New Mexico (Mr.

ANDERSON), the Senator from Nevada (Mr. CANNON), the Senator from Georgia (Mr. GAMBRELL) the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Washington (Mr. MAGNUSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I also announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnestoa (Mr. MONDALE), and the Senator from Indiana (Mr. BAYH) are absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Washington (Mr. MAGNUSON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Rhode Island (Mr. PASTORE), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Indiana (Mr. BAYH) would each vote "yea."

Mr. COTTON. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Kentucky (Mr. COOK), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), the Senators from Ohio (Mr. SAXBE and Mr. TAFT), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from New York (Mr. JAVITS) is absent by leave of the Senate on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from South Carolina (Mr. THURMOND) is absent on official business.

The Senator from Delaware (Mr. ROTH) and the Senator from Vermont (Mr. STAFFORD) are absent on official business while attending an interparliamentary meeting in Tokyo.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Vermont (Mr. STAFFORD), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 62, nays 0 as follows:

[No. 135 Leg.]

YEAS—62

Aiken	Curtis	Mansfield
Allen	Dole	McGee
Allott	Eagleton	Miller
Baker	Eastland	Nelson
Beall	Ellender	Packwood
Bellmon	Ervin	Pearson
Bennett	Fannin	Pell
Bentsen	Fulbright	Percy
Bible	Goldwater	Proxmire
Boggs	Gurney	Ribicoff
Brooke	Hansen	Schweiker
Burdick	Hart	Smith
Byrd, Harry F., Jr.	Hartke	Spong
Byrd, Robert C.	Hatfield	Stennis
Case	Hruska	Stevens
Chiles	Humphrey	Stevenson
Church	Inouye	Symington
Cooper	Jordan, N.C.	Talmadge
Cotton	Jordan, Idaho	Tunney
Cranston	Kennedy	Williams
	Long	Young

NAYS—0

NOT VOTING—38

Anderson	Hughes	Muskie
Bayh	Jackson	Pastore
Brock	Javits	Randolph
Buckley	Magnuson	Roth
Cannon	Mathias	Saxbe
Cook	McClellan	Scott
Dominick	McGovern	Sparkman
Fong	McIntyre	Stafford
Gambrell	Metcalf	Taft
Gravel	Mondale	Thurmond
Griffin	Montoya	Tower
Harris	Moss	Weicker
Hollings	Mundt	

So the bill (S. 3323) was passed.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MANSFIELD. Mr. President. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, in view of the fact that the Judiciary Committee is now about to undertake another meeting on the Kleindienst-ITT affair, and in further view of the fact that it is my understanding some sort of decision will be reached around 12 noon today, I ask unanimous consent that the period for the transaction of routine morning business, under the same stipulations, be continued until the hour of 12 noon.

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

VIETNAM

Mr. KENNEDY. Mr. President, my outrage over the present murderous offensive in Vietnam is matched only by my outrage over the cruel and senseless view at large in the Nation today that the proper present policy for the United States is to let the slaughter proceed. How can this Nation possibly wash its hands of the blood that is being shed today in North and South Vietnam?

It is a tragic sign of how far we have lost our way in Indochina that the only real debate now underway in the mind of the Nation is a debate on the question of whether and to what extent American land, sea, and air forces should be engaged in this incredible new bloodbath. That is not the only question, and if that is the only question we ask ourselves, then we shall never find an answer that can satisfy our conscience.

The simple truth is that this test of Vietnamization, with or without American support, is a wholly immoral and unjustifiable test, because it is a test that is being carried out with the lives of men and women and children. Those dead and dying bodies stretched out beside the road across our television screens last night are the bodies of human beings. We do not have the right, no one has the right, to demand a test like that.

What possible justification can there be for a policy that asks such a terrible sacrifice in human life? The conscience of America ought to be demanding a cease-fire, not simply asking our people to accept a ringside seat to watch the slaughter.

Does anyone really doubt, if the current offensive from the North is somehow blunted or turned back, that a year or two from now there will be another new offensive, and another deadly round of the killing and destruction that have robbed us of our spirit for a decade?

It does not have to be this way. The option that President Nixon forgets is the only hopeful option we really have—the option of peace at the conference table in Paris. The question we ought to ask ourselves is whether we can be bold enough to go back to Paris now, and try again for peace. How can we possibly justify a situation in which the only empty seat at the peace table is the American seat?

In fact, the circumstances of the current offensive offer us a fertile and realistic opportunity for immediate progress in the Paris talks. Both sides have much to lose in lives and national prestige if the present fighting is allowed to run its course. Before the direction of the battle is clear, therefore, let us sit down again at the peace table. Let us demand a ceasefire by both sides. Let us explore every possible avenue for compromise and negotiated settlement.

The reason for the current impasse in Paris is clear. The talks have broken down because neither side is willing to make any substantial compromise for the purpose of securing peace. President Nixon insists that we will never surrender to the enemy, and the enemy insists that they will never surrender to Saigon. But that is simply posturing for domestic political gain. No one is asking for surrender by either side.

For some inexplicable reason, President Nixon insists on showing more respect for President Thieu of South Vietnam than Prime Minister Heath was willing to show last month for Prime Minister Faulkner of Northern Ireland. Surely, if Britain has the courage to take a new initiative for peace in Ulster, then we can do no less in Vietnam.

What is asked by those of us who oppose this war is a genuine attempt at compromise—a compromise fairly reflecting the central years-old fact that the war is a stalemate on the battlefield, and that the best hope for peace in the foreseeable future is a settlement at the conference table.

President Eisenhower knew about these things. He came to office in 1952 on a pledge of peace, and in 2 years, he had ended the Korean War. Later, he told us, in words so plain that no one can mistake them:

People want peace so much that governments had better get out of their way and let them have it.

That is the policy we ought to follow now. Perhaps there is no way that the senseless new killing that is taking place today can be avoided. But we shall never know unless we try. We need a test of negotiations, not a test of Vietnamization. In sum, the issue comes down to whether the political life of President Thieu is worth the death of thousands of South and North Vietnamese soldiers and civilians. I do not believe it is, and I hope that America will not turn its back on Paris in the hours and days to come.

Mr. HUMPHREY. Mr. President, I want to commend the distinguished Senator from Massachusetts on his sensible and constructive message today. It is one that should be heeded. It was given in the spirit of tolerance and temperance. It is a message to all of us, not merely to the administration. It states what we should do; namely, reopen the peace negotiations in Paris. There we want to have the same kind of courage we are exemplifying on the battlefield, a willingness to find the solutions and a willingness to recognize that this war has gone on too long, that it is too costly and too brutal for its continuation. I join the Senator from Massachusetts in his comments.

Mr. President, this is one of the most unhappy periods in our national life. We have spent the last 10 years in the lives of so many young Americans in the struggle. There is not a single thing to be gained by its continuation. There is everything to be gained by its solution and its ending.

The only answer is a negotiated political settlement.

It is perfectly obvious that we are not going to have an all-out victory, as some have asked for.

It is equally obvious that neither are the North Vietnamese going to obtain an all-out military victory.

It is quite obvious that the blood bath will continue, with civilians being the victims as well as the military.

I would therefore hope and pray that the Senate, in a most respectful yet firm way, will send a message to the President, to our Government, to reopen the negotiations and to reopen them on the basis of trying to find a political solution and calling for a cease-fire.

In fact, I would urge that we invoke the good offices of the United Nations to seek a cease-fire. In the previous administration, there was a hesitancy to do this. That is the past. The fact is, the United Nations has a role to play. It should play it. We should seek outside good offices and get their views, and then have the courage to seek a political settlement. We owe nothing to President Thieu. Nothing. He owes everything to the United States of America. The last election there was not a true democratic election.

I do not want to say that President Thieu has not tried to do his job as President of his country, but we do not have an obligation to him. We have an obligation to the American people. It is in our national interest and in the interest of international peace and goodwill to end the killing and to do it promptly.

There is no way to do it except through a negotiated political settlement.

I compliment the distinguished Senator from Massachusetts on what I consider to be a succinct, thoughtful, and constructive proposal, given without political acrimony and in the spirit of peace that he talks of.

Mr. KENNEDY. I thank the distinguished Senator from Minnesota for this comments.

Mr. PELL. Mr. President, I, too, would like to commend the distinguished Senator from Massachusetts for his thoughtful observations and would hope that they would be taken up.

Mr. President, it would seem that we in the United States are in a particular state, in that we think of the war as winding down. It is winding down from the viewpoint of the number of Americans now involved, but from the viewpoint of the level of deaths in Indochina, the number of people being killed on the average each month remains the same.

Thank God Americans are not being killed in as great a number as they were. But their places are now being taken up by the Laotians and the Cambodians, by the Vietnamese, North and South. They are being killed in greater numbers by our planes as our casualties decline in number. We have an odd view that, if we do not see the people when they are killed, because we do it from the air, then those deaths do not count. The level of deaths, however, is just the same. And now the level of deaths is going up much higher.

I would hope the American people would realize that even though far fewer American young men have been killed in this last year, others have been killed, not just young men, but old men, and the women and children of Indochina. We should move at this time to make a renewed effort to try to secure a political settlement that will represent the forces in being in that unhappy land of Vietnam. And I would urge that the White House and those in the administration listen to those of us on the Hill who have been pressing in this direction now for many years.

Mr. GOLDWATER. Mr. President, I think the time has come for all patriotic, well-meaning Americans to recognize that what is now taking place in South Vietnam is more than an episode in the Indochina hostilities, more than an item for partisan debate in American political circles—it is a question of crisis proportions involving American lives, American prestige, American honor, American commitments, and the lives of our South Vietnamese allies.

This is a question of intensive warfare. It is a problem which is above politics. It is a set of disagreeable and dangerous circumstances which were thrust on President Nixon as a result of a war in which he had no part, either in beginning or in escalating.

Mr. President, I believe it is time for all Americans—Democrat and Republican, candidate and noncandidate, liberal and conservative—to join ranks and support the Chief Executive of the United States in any actions which he feels must be taken to counter the all-out, well-organized, Moscow-directed offensive being waged against the South Vietnamese.

I call upon my conservative friends in particular to stop their nit-picking criticism of the President and get behind his administration and support it in every way possible in this present military operation.

Mr. President, I do not think there is any point today in debating what should have been done in the past or what should be done right now. The situation is serious. It has been dumped squarely in the lap of our President, and he is responding in a way I am sure all patriotic Americans would approve.

I believe, Mr. President, we should show the enemy in Vietnam precisely how we stand by bombing every conceivable target in the North which might supply the men and equipment to kill American boys and to slaughter our ally.

Mr. President, I have heard the suggestion that we should negotiate. I suggest that we have been negotiating and negotiating and negotiating. We have never gained 1 inch by negotiating. We kept our word with respect to the DMZ. The North Vietnamese did not. They were violating their own words and they have called this upon themselves.

I think that our withdrawal at this point would be disastrous. If I felt for one moment that the North Vietnamese, whose sole objective is the capture of South Vietnam, would sit down and talk, I would be in favor of it. But there was no indication of this before. There is no indication now that the North Vietnamese want to do anything but have the United States withdraw their support of the Government of South Vietnam, whatever that government might be.

I think the President is absolutely right in what he is doing from a military standpoint and from the standpoint of protecting the lives of our men and the lives of our allies. As I have said in my few remarks here and as I have said for 8 or 10 years now, I would hope that the military equipment in North Vietnam, which we have allowed to be built up by reason of keeping our word, would be destroyed before it can be used to kill our boys and our friends and allies in South Vietnam.

Mr. SPONG. Mr. President, I yield my 3 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER (Mr. CHILES). The Senator from Massachusetts is recognized for 3 minutes.

Mr. KENNEDY. Mr. President, I would like to ask a question of my friend, the Senator from Arizona. As I understand the situation in Paris today, it is that the North Vietnamese are at the peace

table and that the empty seat is the seat of the United States.

This administration has always been committed to a cease-fire in conflicts in other parts of the world, like the conflict in the Middle East and the India-Pakistan war. Why is it so reluctant to seek a cease-fire now in Vietnam? Why are we so reluctant to go back again to the Paris negotiations and say that what we are really interested in is an end to the killing? Why do we not demand an immediate cease-fire?

We know for sure that we cannot get it if we do not go to Paris and try. The North Vietnamese are there already. The empty seat at the peace table is the seat of the United States. Why are we not prepared at least to explore this avenue?

I would be interested in the time we have remaining in hearing from the Senator from Arizona on that question.

Mr. GOLDWATER. Mr. President, I believe I have a minute or two left. I would say that on six different occasions we have made flat proposals to the North Vietnamese and have not received an answer to any one of them. We have made proposals for a cease-fire six different times under conditions that certainly the North Vietnamese could understand.

Frankly, I do not think we have any business sitting down at a table when the other side is represented by people who have only one desire, and that desire is not for a cease-fire. It is to take over the Government of the South Vietnamese. They have openly said that. We have transcriptions of their language which show that that is what they want and nothing else.

So, until we can get them to agree to talk to us about a cease-fire and really go to work on that proposal and not cheat and lie and crawl around as they did on their agreement with respect to the 1968 bombing halt, I do not think the United States should pay any attention to the negotiating table.

Mr. KENNEDY. Mr. President, with respect to the argument that we have no obligation to go back to the Paris peace talks while people are being killed, I cannot understand the arrogance of that position. We have a special obligation to go back there, at a time when thousands of men, women, and children are being killed on the battlefield.

Are we going to say that we have no obligation because it is only the South Vietnamese and the North Vietnamese who are being killed? We say we have no obligation to go back to the conference table. Why can we not go back to the peace talks and say, "Our desire is for peace."

The Senator from Arizona is quoting the old shibboleth that the North Vietnamese are not going to be satisfied until the South Vietnamese surrender. And the administration is saying that we will never negotiate if it means the surrender of the South Vietnamese.

Those are bargaining positions that are used when trying to reach some settlement.

If we persist in refusing to go to the negotiating table, we ought to remind ourselves that thousands of soldiers and innocent people are being caught in the crossfire in this war and are being killed.

This is the tragedy of testing our policy of Vietnamization. We are all standing back like citizens of ancient Rome, watching the gladiators fight and die in the arena.

Mr. GOLDWATER. Mr. President, when we went into this war, we knew there would be killing, because that is what happens in war. If we did not want killing, we should have never sent troops to South Vietnam in the early 1960's. We should have never engaged our ground forces there. We should have allowed our Army and Navy and Air Force to be operated as they should have been operated without being hamstrung by civilians back in Washington.

This is a war. We do not like war. No one likes war. However, we are engaged in a war with an enemy that wants to take all of Southeast Asia. There is no secret about that. For us to give in and go back to the negotiating table that they themselves have desecrated time after time would not be honorable on our part. We should get this war over with. And we should have done it 8 or 9 years ago.

Mr. KENNEDY. The administration was quick to criticize Mr. George Meany for walking off the job on the Pay Board in the war against inflation. Yet the very same day the President made that accusation, he ordered Ambassador Porter to walk off the job at the peace negotiations in Paris. I think it is important that the American people keep in mind that comparison.

Mr. GOLDWATER. Mr. President, I might say that there is no comparison between Mr. Meany walking out of the negotiations, as I heard the Senator say, and the North Vietnamese. As much as I disagree with Mr. Meany, I would not compare him to the North Vietnamese. But Mr. Meany has never tried to help America in its endeavor to stabilize wages and prices. And I think it is nice to have him off of that Board. I am glad that he quit.

Mr. HUMPHREY. Mr. President, I rise only to make a brief comment in respect to the discussion taking place on the floor. It is most difficult since I served as a member of the administration that was involved in the escalation of this war in Southeast Asia. I heard every argument that has been said here today, every one. I want to tell you something, Mr. President: They did not work. I heard it said that we had to do more; I heard that they would not negotiate; I heard we ought not to seek a cease-fire because it was not the right time. Let me tell you, Mr. President, I heard it often, and I believed it. And quite frankly, in retrospect, what I heard did not make much sense, and in retrospect what I believed did not make much sense.

If there is a lesson to be learned from this struggle it is that we should disengage and do it as rapidly as we possibly can, and to remember that in so doing we may, indeed, have our pride hurt and we may, indeed, have much to regret.

We have given billions of dollars to South Vietnam and thousands of lives. They are not helpless. Possibly history will record that much of what we did there was to help much of Southeast Asia. I hope so.

But there is no substitute for having the courage to stay at a conference table even if it does not produce results, if you have the courage to stay on the battlefield. We cannot say there will be no results from Paris, but there will be none if you are away. There is no doubt it is a propaganda tool for North Vietnam, but so what; it is the only place you have to talk to them.

Mr. President, if you had a half million troops there, as we had, and all the power of the American Air Force there, as we had, and we did not stop them, what makes anyone think we can do it now with less than 100,000 troops?

I think the Senator from Massachusetts was restrained in his comments. I have on other occasions taken issue with him, but I believe now it is imperative that we seek the good offices of every country in the world to get a cease-fire, that we take this case to the United Nations to seek a cease-fire, that we reevaluate the standards we put on the table for political settlement and that we ask ourselves whether we want to be there for another 3, 4, or 5 years because unless some settlement is brought about, that is what will happen. I do not want that to happen. I do not think it is a matter of our winning the war; it will not be won unless this Nation is willing to go all out and precipitate the possibility of a third world war.

We know that we can make another choice and that other choice, that is so discouraging at times and distasteful, is to find some kind of compromise political settlement. I have come to this belief over the last 3 or 4 years. I came to that point of view in 1968. I had to break with my own administration and my President, and I want to say to you, Mr. President, I am sorry I did not come to that point of view sooner. I think it is imperative we do what needs to be done and that is to walk the extra mile for peace.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MANSFIELD. Mr. President, I have been listening to this debate and the colloquy. I have had my mind on the situation in Vietnam, Southeast Asia, and Indochina, especially, for a good many weeks, months, and years.

In my opinion we have never had any business in Southeast Asia. It was not and is not vital to the security of this country. We are engaged in an immoral, an utterly immoral, and a degrading war. We have paid a price for which there can never be any compensation and, especially so, have our servicemen.

A statement has been made to the effect that troops were first sent there in the 1960's. As a matter of fact, the first military mission was sent into Saigon after the Geneva Accords of 1954. With the passage of time that number gradually increased to about 16,000 under the Kennedy administration and to around 549,000 under the Johnson administration. Under this administration it has been decreased now to about 95,000. The

first of next month it will drop to 69,000 and the trend seems to be down and out.

So, Mr. President, blame must be placed where the blame lies and credit must be given where the credit is due. But this war is, to use a phrase used this morning, more than an episode. It is, I repeat, a tragedy which has been responsible for the devastation of the Indo-Chinese societies, for the ruination of cultures, for the creation of at least 700,000 orphans, for the creation and the accumulation of millions of refugees, peaceful people, especially in Laos and Cambodia, who sought nothing but peace and wanted nothing but to stay out of the war.

We do bear a great share of the responsibility for the burden for that which has happened in that particular part of the world.

It is my understanding that our Government may have been, in part at least, and unwittingly perhaps, responsible for the assassination of President Ngo dien Diem an act I deplored at the time and have deplored ever since. I may be in the minority, but Ngo dien Diem was the one man in all South Vietnam who brought a degree of stability and unity to that country and who, had he lived, might have achieved the objectives he had laid out as his goal.

There have been suggestions made that we should bomb every conceivable part of North Vietnam in return for what the North Vietnamese are doing in and below the DMZ.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PELL. Mr. President, I yield to the Senator whatever time remains to me.

The PRESIDING OFFICER. The Senator is recognized.

Mr. MANSFIELD. Even the words "Hanoi and Haiphong" have been heard again—that they should be bombed. I thought we had learned our lesson years ago. The use of air power is being emphasized, and we are told that we should use it more and more; and that negotiations should be shunted aside because nothing is being accomplished. But I believe in the old Churchillian concept that it is better to "jaw, jaw" than to "fight, fight," and I believe in it because of the casualties which this Nation has suffered up to this time.

Through March 25, 45,669 Americans were killed in combat, 302,787 Americans were wounded in combat, and 10,119 Americans were killed in noncombat activities.

On the other side we find that they have lost—killed, not wounded—803,145 through March 25 of this year.

Among our allies the dead number 4,870. For South Vietnam the total dead is 147,305.

Well over 1 million in casualties, and no end in sight.

The latest figures indicate that 10 Americans were killed last week, and 33 wounded, as I recall, not including the 14 shot down in a helicopter gunship during the same period.

There have been some allegations about a violation of an understanding because the DMZ has been crossed by the North Vietnamese. Mr. President, if there ever was such an understanding, it has been violated by both sides. The supplies down through the trails over the years have not been decreasing, but increasing in tonnage despite the use of air power. What we are up against now is more in the way of sophisticated weaponry than at any time since this war got underway.

At present we have four aircraft carriers, with a total complement of planes of somewhere around 350. We have planes flying from the fields in South Vietnam and Thailand as well.

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

Mr. BIBLE. Mr. President, I ask unanimous consent that I may yield my 3 minutes to the distinguished majority leader.

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

Mr. MANSFIELD. Mr. President, may I say that the war in Vietnam is not one of our finest moments. May I say that in my opinion it is an immoral war. May I say that it is a tragedy of the gravest consequences. And I have just touched the highlights when I have indicated what the figures and the facts are.

I would hope that we do everything in our power to bring about an end to this struggle, which has cost us so much in the field, which has helped—I repeat—to destroy societies, cultures, and lands occupied by other people, which has created a refugee class in the millions, an orphan class running in the hundreds of thousands, and which has left its scars on our own society. Vietnam is in part responsible for much of the difficulties which confront this Nation today socially, economically, and financially.

It would be my hope that we would do what we could to bring about not only an alleviation of the conflict, but also an ending of the conflict. I do not care what any Member in this body says or what his position is on this war. It is my considered opinion that all 100 Members of the Senate want to bring this war to a close, as does the President of the United States. Now we are faced with a grave situation in which Vietnamization is being put to the test, and because of what has happened the number of POW's is increasing, and the war, both on the ground as far as the South Vietnamese are concerned, and in the air as far as we are concerned, is increasing in intensity. As it increases in intensity, it means that the numbers of POW's are not being decreased, but increased in number, and so are the dead and the maimed.

Mr. President, as far as I am concerned, as a Senator from the State of Montana, if it is a choice between Saigon and the U.S. prisoners of war, my choice, without question, is on the side of the POW's and the recoverable MIA's, the missing in action.

So I would hope that a means, a way, a solution could be found to resume negotiations and to arrive at an accommodation which would bring this tragedy to a close.

No great nation has ever made a mistake by admitting it has made a mistake, and this country has made a mistake in becoming involved in Southeast Asia.

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.

KATHERINE KASAFTES SCHNEIDER

(Mr. BAKER earlier today introduced S. 3457 for the relief of Katherine Kasaftes Schneider, which was read twice and referred to the Committee on the Judiciary. Subsequently, Mr. EASTLAND, from the Committee on the Judiciary, reported the bill to the Senate without amendment.)

Mr. BAKER. Mr. President, I ask unanimous consent that I may call up S. 3457 for immediate consideration. The bill has been reported to the Senate.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read the bill by title, as follows:

A bill (S. 3457) for the relief of Katherine Kasaftes Schneider.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. BAKER. Mr. President, this is a bill that has been introduced and referred to the Committee on the Judiciary and reported for action by the committee. I have cleared its consideration with both sides. It is a matter that I know of firsthand and know to be meritorious.

It has to do with the naturalization of a distinguished lady of Memphis, Tenn., who was under the impression that she was a citizen of the United States by derivative right. However, it appears that the naturalization documents pertaining to her father have not been located in the Immigration and Naturalization Service, notwithstanding the fact that she has lived in the United States all her life except for a brief period when her parents were in Greece, where she was born, and notwithstanding that she has been connected with the Memphis Press-Scimitar for many years.

The purpose of this bill is to provide legal clarification of the fact of Mrs. Charles Schneider's derivative American citizenship under the provisions of section 321 of the Immigration and Nationality Act.

Mrs. Schneider and her husband are among the leading citizens of Memphis, Tenn., and I have known them for many years. Mrs. Schneider was born in Greece, and her parents were Greek citizens. She came to this country with her mother as a young girl and has lived in Memphis since that time. In 1946 Mrs. Schneider's mother became a naturalized citizen of the United States, and it was assumed by all concerned at that time that Mrs. Schneider simul-

taneously became an American citizen by derivation.

Earlier this week, in planning for a trip abroad, Mrs. Schneider was astonished to learn, as were all of us who know her, that some legal questions remained as to the certainty of her citizenship. The purpose of the bill I have introduced today is to clarify once and for all the fact of Mrs. Schneider's American citizenship.

As I said earlier, I have known Charles and Kay Schneider for many years. I have the highest respect and admiration for both of them, and I earnestly hope that both Houses of the Congress will act with the utmost expedition to remove any doubt that might remain with respect to her status as a citizen of the United States.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. BAKER. I yield.

Mr. MANSFIELD. Mr. President, this is a most meritorious case and I am happy to say, speaking for this side, that we recommend the unanimous approval of the bill.

Mr. BAKER. I thank the majority leader.

The PRESIDING OFFICER. The bill is open to amendment.

If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

S. 3457

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Katherine Kasaftes Schneider, shall be held and considered to have been lawfully admitted to the United States as of October 6, 1919, and to have acquired United States citizenship under the provisions of Section 321 of the said Act as of December 20, 1946, the date on which her mother was naturalized as a citizen of the United States.

AUTHORIZATION FOR COMMITTEE ON AGRICULTURE AND FORESTRY TO FILE REPORTS UNTIL 5 P.M. TODAY FOLLOWING ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Agriculture and Forestry have until 5 p.m. today to file reports following the adjournment of the Senate.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Has an order been entered that when the Senate adjourn today—late this afternoon, I hope—it convene at 11 o'clock on Monday morning?

The PRESIDING OFFICER. Such an order has been entered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PRINTING OF ADDITIONAL COPIES OF SENATE REPORT ON THE RURAL DEVELOPMENT ACT OF 1972

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

The PRESIDING OFFICER. The clerk will read the resolution.

The legislative clerk read the resolution (S. Res. 291) as follows:

Resolved, That there be printed for the use of the Committee on Agriculture and Forestry three thousand five hundred additional copies of its report to accompany the Rural Development Act of 1972, (S. Rept. 92-734).

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

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

Mr. TALMADGE. Mr. President, the Committee on Agriculture and Forestry will report to the Senate today a very comprehensive rural development bill. There has been tremendous interest in the bill among Senators and the public generally. There have been an unusual number of requests for copies of the committee report, both from Senators and from the public.

This additional printing will cost some $1,200. It has been cleared with the ranking minority member of the Committee on Agriculture and Forestry, the distinguished Senator from Iowa (Mr. MILLER), with the chairman of the Rules Committee, the distinguished Senator from North Carolina (Mr. JORDAN), and with the distinguished ranking minority member of the Rules Committee, the Senator from Kentucky (Mr. COOK), as well as with the leadership on both sides of the aisle, all of whom, in view of the urgency and the need for additional copies, have agreed to pose no objection.

The printing of the needed additional copies at the same time as the regular number will, of course, result in a certain saving to the taxpayers.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was considered and agreed to.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. TALMADGE, from the Committee on Agriculture and Forestry, together with individual and additional views.

S. 3462. An original bill to provide for the development of rural areas (Rept. No. 92-734).

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

S.J. Res. 210. A joint resolution to authorize the President to issue a proclamation designating the last full calendar week in May of 1972 as "Clean Waters for American Week" (Rept. No. 92-735);

H.J. Res. 563. A joint resolution to authorize the President to proclaim the last Friday of April 1972 as "Nationl Arbor Day" (Rept. No. 92-736);

H.J. Res. 687. A joint resolution to authorize the President to designate the third Sunday in June of each year as "Father's Day" (Rept. No. 92-737); and

H.J. Res. 1095. A joint resolution authorizing and requesting the President to proclaim April 1972 as "National Check Your Vehicle Emissions Month" (Rept. No. 92-738).

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. PERCY (for himself and Mr. HUMPHREY):

S. 3458. A bill to amend the Civil Rights Act of 1964 in order to make discrimination because of physical or mental handicap in employment an unlawful employment practice, unless there is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. Referred to the Committee on the Judiciary.

By Mr. MILLER:

S. 3459. A bill to provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes. Referred to the Committee on Agriculture and Forestry.

By Mr. PEARSON:

S. 3460. A bill to authorize the Civil Aeronautics Board to enter into contracts, on an experimental basis, with air carriers to provide air service to small communities, and for other purposes. Referred to the Committee on Commerce.

By Mr. STEVENS:

S. 3461. A bill to authorize the Secretary of Commerce to purchase in certain cases the catches of commercial fishermen which are prohibited from sale by restrictions imposed on domestic commercial fishing by a State or the Federal Government. Referred to the Committee on Commerce.

By Mr. TALMADGE, from the Committee on Agriculture and Forestry:

S. 3462. An original bill to provide for the development of rural areas. Ordered to be placed on the calendar.

By Mr. JORDAN of North Carolina:

S. 3463. A bill to amend section 906 of title 44, United States Code, to provide copies of the daily and semimonthly CONGRESSIONAL RECORD to libraries of certain U.S. Courts. Referred to the Committee on Rules and Administration.

By Mr. HUMPHREY:

S. 3464. A bill to establish an executive department to be known as the Department of

Education, and for other purposes. Referred to the Committee on Government Operations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PERCY (for himself and Mr. HUMPHREY):

S. 3458. A bill to amend the Civil Rights Act of 1964 in order to make discrimination because of physical or mental handicap in employment an unlawful employment practice, unless there is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. Referred to the Committee on the Judiciary.

Mr. PERCY. Mr. President, on November 19, 1971, I introduced with Senator COOK a concurrent resolution calling for a declaration of rights for the mentally and physically handicapped. While that resolution was not meant to solve the problems that plague our handicapped citizens, it was an attempt to draw attention to their plight and to encourage the solution of their problems.

Since the introduction of that resolution, I have committed myself to finding for our handicapped citizens a legislative solution to equal educational opportunity, equal job opportunity, and equal treatment before the law. As a part of that commitment, I introduced with Senator HUMPHREY on January 20, 1972, a bill to amend the Civil Rights Act of 1964 to prohibit discrimination against the mentally and physically handicapped in programs which receive Federal aid. I also cosponsored two measures recently introduced by Senator WILLIAMS, one calling for a White House Conference on the Handicapped, and the other calling for the establishment of an Office for the Handicapped within HEW to coordinate programs for the handicapped.

Today, to further that commitment I am introducing on behalf of myself and Senator HUMPHREY, a bill in the nature of another amendment to the Civil Rights Act of 1964. This bill, introduced in the House by Representative VANIK, would make discrimination in employment because of physical or mental handicap an unlawful practice.

The civil rights amendment introduced on January 20, 1972 would provide equal treatment of the handicapped in all programs which receive Federal assistance. The bill I am introducing today would open for the handicapped many more doors to employment. Employment is the key to self-sufficiency and independence. Without it, equal educational opportunity or social acceptance would be meaningless.

Yet, millions of our handicapped Americans are barred from work because of society's prejudices. According to the best statistics that the Senate Subcommittee on Handicapped Workers could find, there are more than 22 million adults in this country with physical handicaps and 5.6 million persons of all ages with mental handicaps severe enough to limit in some way their ability to work. Of the 22 million with physical disabilities, an estimated 14 million could work if given the opportunity. And of the 5.6 million who are mentally retarded, 9 out of 10 could work if given training and rehabilitation.

Actual employment now, however, accounts only for a little over 800,000 of the 27.6 million adults with physical and mental handicaps:

Of about 150,000 blind persons of working age in this country, about 50,000 of them are employed.

Of the 60,000 paraplegics of working age, 47 percent are employed.

Of the 400,000 epileptics of working age, the employment rate, according to best estimates, is between 15 percent and 25 percent.

Of the 200,000 persons of working age with cerebral palsy, only a handful are employed.

And of the 5.6 million who are mentally retarded, 5,000 are employed by the Federal Government.

What is the cost effectiveness or the sense of banishing our handicapped Americans to life on welfare or to "terminal care" in an institution? There is ample proof that adding the handicapped to our work force can benefit not only our national economy but also the investment returns of our income tax revenues. In fiscal 1966, for example, the Federal Government spent $3.5 billion on the handicapped. Of this money, $2.65 billion went for income maintenance. And HEW's Bureau of Education for the Handicapped reports that more than 30 percent of the 2.5 million handicapped children expected to leave school during the next 5 years may need either partial or full public support in the form of institutionalization or welfare. Lifetime institutionalization or welfare costs about $250,000 per person. But with proper training, at least 90 percent of those handicapped children are potentially employable.

According to the President's Committee on Employment of the Handicapped, the number of handicapped persons rehabilitated and placed in employment is increasing each year. Businesses and industries have discovered that there are many jobs that the handicapped can do well—often better than nonhandicapped workers.

Cerebral palsy victims are being trained to use precision tools.

Paraplegics are working productively on assembly lines.

Deaf mutes make better than average file clerks.

Deaf persons do well as linotype operators and keypunch tabulators.

Blind workers have made superior assemblers, inspectors, and sorters in such industries as electronics, aircraft and missile production.

Absenteeism and recidivism among the 5,000 mentally retarded workers employed by the Federal Government in over 100 different wage board classifications is lower than nonhandicapped workers. Also, their job performance is excellent.

The handicapped are not asking for special privileges—just a chance to learn a trade, work and live like any other American. Can any one of us, in good conscience, deny them this?

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

S. 3458

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

SECTION 1. Sections 703(a)(1), 703(a)(2), 703(b), 703(c)(1), 703(c)(2), and 703(d) of the Civil Rights Act of 1964 are each amended by inserting after "sex", the following: "physical or mental handicap,".

SEC. 2. Section 703(e)(1) of the Civil Rights Act of 1964 is amended by inserting after "national origin" the first time it appears the following: ", or because of the presence of a physical or mental handicap," and by inserting after "national origin" the second time it appears the following: ", or the absence of a physical or mental handicap,".

SEC. 3. Section 103(h) of the Civil Rights Act of 1964 is amended by inserting after "national origin," the following: "or because of the presence of a physical or mental handicap,", and by inserting after "national origin" the following: ", or because of the presence of a physical or mental handicap".

SEC. 4. Section 703(j) of the Civil Rights Act of 1964 is amended by inserting after "or group" the following: ", or because such individual or the members of the group are physically or mentally handicapped,", and by inserting after "national origin" the second and third times it appears the following: ", or having a physical or mental handicap,".

SEC. 5. Section 704(b) of the Civil Rights Act of 1964 is amended by inserting after "national origin," the following: "or absence of a physical or mental handicap,", by inserting after "national origin" the second time it appears the following: ", or presence of a physical or mental handicap,", and by inserting after "national origin" the third time it appears the following: ", or absence of a physical or mental handicap.".

SEC. 6. Section 706(g) of the Civil Rights Act of 1964 amended by inserting after "national origin" the following: ", or because of the presence of a physical or mental handicap,".

SEC. 7. The center heading of section 703 of the Civil Rights Act of 1964 is amended by inserting after "sex," the following: "PHYSICAL OR MENTAL HANDICAP,".

SEC. 8. Title VII of the Civil Rights Act of 1964 is amended by inserting at the end thereof the following new section:

"DEFINITION OF PHYSICAL OR MENTAL HANDICAP

"SEC. 717. For the purposes of this title, the term 'physical or mental handicap' includes mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, serious emotional disturbances, being crippled, or any other health impairment which requires special education and related services."

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

EMPLOYMENT RIGHTS OF THE HANDICAPPED

Mr. HUMPHREY. Mr. President, it is with great pleasure that I join Senator PERCY in introducing legislation to make discrimination because of physical or mental handicap in employment an unlawful employment practice, under the Civil Rights Act of 1964.

This legislation supplements S. 3044, which I introduced and Senator PERCY jointly sponsored on January 20, 1972, providing for the protection of the rights of the handicapped by prohibiting needless discrimination in programs receiving Federal financial assistance. It has become apparent that further specific protections must be afforded to millions of

Americans with mental and physical handicaps denied equal job opportunities and fair wages in the absence of a bona fide occupational qualification requirement.

As the President's Committees on Mental Retardation and on Employment of the Handicapped have documented time and again, there are thousands of jobs that the handicapped can do, and do well. Of 22 million Americans with physical disabilities, 14 million can and want to work. But only one-third of blind persons of working age are employed, and less than half of the Nation's paraplegics have found work. Currently available statistics, whose general inadequacy sharply underscores the extent to which those with mental and physical disabilities are denied dignity as persons and are forgotten by society, indicate that only a minority of these people have found employment.

Yet we know how invaluable the discovery of useful capabilities is in rehabilitation. We know the damage done to any person's sense of dignity and security when he is denied the opportunity to work and earn his own way in society. And we know that the cost of educating an educable handicapped or retarded child is less than one-tenth the cost to society of lifetime institutionalization; and moreover, that training and rehabilitation costs are repaid many times over in taxes on earned income.

Shall we condemn 2,100 paralyzed Vietnam veterans simply to exist in isolation? Should a wheelchair automatically disqualify 250,000 Americans for jobs? Should tens of thousands of unskilled and semiskilled jobs, including service occupations which are increasing faster than any other job category in the Nation, go begging, when many of them are well suited for the retarded when appropriate adjustment assistance is provided?

These are harsh questions, but they are questions that must now be forced upon the conscience of America. There can be no further delay in affirming the civil rights of 28 million Americans.

These rights were clearly and forcefully spelled out in Senate Concurrent Resolution 52, introduced by Senator COOK, and which I was privileged to cosponsor. They are rights that must now be given the force of law, and I would urge that in addition to the passage of this resolution, the Senate include on its agenda for action this year S. 3044 and the legislation introduced today to amend, respectively, titles VI and VII of the Civil Rights Act. I would also expect that action can be completed in the present Congress on the legislative program introduced by Senator WILLIAMS, which I have been pleased to join in sponsoring and which is important in backing up legal rights with effective programs of Federal assistance: Senate Joint Resolution 202, authorizing funds for a White House Conference on the Handicapped; S. 3158, to establish an Office of the Handicapped in the Office of the Secretary of Health, Education, and Welfare; and S. 3407, the Supplementary Education Services for the Handicapped Act.

The time has come to fulfill promises made to millions of Americans with physical and mental handicaps. In guaranteeing their right to equal opportunity and dignity, we shall take a major step forward in establishing a better and more creative society for all.

By Mr. MILLER:

S. 3459. A bill to provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes. Referred to the Committee on Agriculture and Forestry.

Mr. MILLER. Mr. President, I introduce, for printing and appropriate reference, a bill to provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation.

All of us are aware of the importance of forest resources to our Nation. Our forests provide us with many different benefits, ranging from purely esthetic values to recreational and economic uses.

While there are vast acreages of private, nonindustrial forest lands and productive units in the Nation, the public resource lands today contain most of the old growth saw timber, and it is the public lands which receive the pressures for preservation on the one hand and multiple use on the other.

One thing is certain. If we are to have a sustained yield for harvest and an adequate resource for other purposes, we must replenish the forests. Although the accuracy of the statistic may be debatable, it is estimated that we are today about 5 million acres behind in reforestation. Even in that phase of forest management which finds natural regeneration the most feasible operation, there are techniques through which man can help nature produce more desirable stands of better trees.

The bill I am introducing today—which was introduced in the House by my colleague from Iowa, Representative JOHN KYL—would be a big step toward improving long-range forest management and assuring the adequate financing. It would transfer section 32 funds derived from customs duties on wood and paper products to a supplemental national forest reforestation fund. This money would be available to the Secretary of Agriculture for the purposes of supplementing programs of tree planting and seeding of national forest lands which need reforestation.

It is my understanding that the House Committee on Agriculture has ordered this bill favorably reported. I believe it would meet a pressing national need, and I urge favorable action by the Senate.

By Mr. PEARSON:

S. 3460. A bill to authorize the Civil Aeronautics Board to enter into contracts, on an experimental basis, with air carriers to provide air service to small communities, and for other purposes. Referred to the Committee on Commerce.

Mr. PEARSON. Mr. President, I am introducing today for appropriate reference a bill to authorize the Civil Aeronautics Board to enter into contracts, on an experimental basis, with air carriers to provide air service to small communities.

The concept embodied in this legislation was first advanced by the Honorable Secor Browne, Chairman of the Civil Aeronautics Board, in a speech in Wichita, Kans., on January 28, 1972. I feel the proposal has merit, and deserves the close scrutiny of the Congress.

The Aviation Subcommittee of the Senate Commerce Committee will commence oversight hearings April 10, 1972, on local air service to small communities. The subcommittee specifically will consider the Limited Air Carrier Act, which I introduced February 17, 1971, to provide for the certification of commuter air carriers presently serving the air transportation needs of small communities.

Because the proposal advanced by Chairman Browne is designed to promote a better system of air service to small communities, I believe it should be before the Aviation Subcommittee when hearings commence on the Limited Air Carrier Act on April 10. Therefore, I am offering legislation to implement the Browne proposal at this time, in advance of the hearing date.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill and the text of the bill, be printed in the RECORD immediately following my remarks.

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

SECTION-BY-SECTION ANALYSIS

SECTION 1

This section declares it to be the intent of the Congress to authorize the Civil Aeronautics Board to conduct an experimental program which will enable the Congress to evaluate the advantages and disadvantages of a contract method of providing air service to small communities.

SECTION 2

This section defines certain terms used in the bill.

(1) "Air carrier" is defined as any citizen of the United States who engages directly in, or proposes to engage directly in, air service. Third-level carriers and persons proposing to provide air service, even though not yet equipped to do so, would meet this definition, as would all certificated air carriers. However, in order to be awarded a contract under the Act, under section 3(c) the Board would have to ascertain that the proposed contractor was capable of conducting safe, reliable operations.

(2) "Air service" means the carriage by aircraft, on a regularly scheduled basis, of persons or property as a common carrier for compensation or hire. This definition differs from the analogous one under the Federal Aviation Act since it encompasses both intrastate as well as interstate operations. This definition is adopted only to facilitate the conduct of the experimental program by obviating difficult jurisdictional problems, and is not intended as a precedent for any purpose. The Board will work closely with the appropriate State authorities in the planning and conduct of the program. Indeed one benefit of the program is that it will permit an evaluation of how Federal and State can most effectively work together in the provision of air service to small communities.

(3) "Board" means the Civil Aeronautics Board.

(4) "Citizen of the United States," as used in the definition of "air carrier," means

(a) an individual who is a citizen of the United States or one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or one of its possessions. The definition is identical to that used in the Federal Aviation Act.

(5) "Small community" is defined as a village, town, city or other locality in the United States not receiving unsubsidized air service on a daily, scheduled basis by a certified air carrier. Thus, for instance, any town whose only air service is third-level service and subsidy eligible service by a local service carrier would be a "small community" for purposes of the proposed legislation. As such it would be eligible for selection under section 5 as a recipient of contract air services.

SECTION 3

Section 3(a) authorizes the Board to enter into contracts with air carriers for air service between small communities selected by the Board under the procedures specified in the Act.

Section 3(b) provides that contracts awarded by the Board shall be subject to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except where the Board determined that a provision of that Act was inconsistent with the purposes of the experimental program. The Federal Property and Administrative Services Act, and the Federal Procurement Regulations issued thereunder by the General Services Administration, regulate in detailed fashion the procurement of goods and services by most Federal agencies. In general, that Act and the Federal Procurement Regulations provide that contracts must be awarded by a process of formal advertising by the procuring agency, and bidding by would-be contractors. With only limited exception, the Board contemplates using that procedure in the award of air service contracts since it appears that that would best assure air service of maximum quality and minimum cost to the Government.

Section 3(c) requires the Board, prior to the award of a contract, to ascertain that the proposed contractor is capable of meeting all Board and Federal Aviation Administration requirements for safety and reliability of operation.

Section 3(d) limits contracts under the Act to terms of up to three years, and prohibits contract renewals. The same carrier may provide air service to the same small community under several successive contracts, but that would be a result of the carrier's favorable offers, not because of any preferential rights. Contract prices may not be increased except to take account of increases in costs attributable to Governmental actions.

SECTION 4

In view of the experimental nature of the Act, this section requires the Board to designate geographical areas in the United States within which small communities will be selected for contracts for air service. In designating these areas, the Board must consider a number of factors (such as travel patterns of the population; the nature of flying conditions; population density; and the nature of the air service that otherwise would be provided) in order that the various selected areas, when considered together, may afford a basis for the evaluation of the contract method of providing air service to small communities.

SECTION 5

This section requires the Board, in selecting small communities located in the areas designated pursuant to Section 4, to take into consideration a number of specified factors, including, among others, the availability of alternative means of transportation; the views of the small communities; the views of the air carriers, if any, providing service to points in the selected geographical areas; and the effect of the selection of such communities on the development of the nation's air transportation system. Further, much as in the case of the selection of geographical areas, the Board's selection would be based in part on the need for sufficient diversity among the various communities to afford a basis for evaluating the contract method of providing air service.

SECTION 6

This section provides that a contract with an air carrier for air service shall include certain provisions, such as the minimum number of frequencies to be operated; the maximum rates and fares to be charged by the carrier; the minimum passenger requirements in respect to the aircraft to be operated; and such arrangements as may be required by the Board to permit reasonable assurance of reimbursement to the Government in the event of default by the air carrier. Under this provision, for instance, a contract might require the contractor to provide a surety bond so that in the event of default, the Board would receive sufficient reimbursement to procure replacement services at no aditional cost to the Government.

SECTION 7

Section 7(a) authorizes the Board to suspend the certificate of an air carrier to provide air transportation on a subsidy eligible basis to and from any small community in respect to which air service is to be provided under the bill. Such a suspension may not exceed the period of the contract under which air service is to be provided. The Board expects that no certificated carrier will be required, against its wishes, to cease service at a point that is to be served by a carrier receiving payments under the proposed legislation. The purpose of the suspension authority in section 7(a) is to shorten the suspension process provided for in the Federal Aviation Act. The procedures in the Federal Aviation Act would be inappropriate for such purposes in view of the experimental nature of the program authorized by the Act, the short period the program will be in effect, and the fact that the certificated carrier's service would be suspended only in conjunction with the provision of contract air service under the Act.

Section 7(b) authorizes the Board to relieve an air carrier from any provisions of Title IV of the Federal Aviation Act (other than certain labor provisions) with respect to air service to small communities if the Board finds such action to be in the public interest. All of the provisions of Title IV relate to economic regulation (as opposed to safety regulation). Under Title IV and related Board rules, a person seeking to provide air service in aircraft in excess of 12,500 pounds must first obtain a certificate of public convenience and necessity, file tariffs, submit a variety of periodic reports, and so on, unless specifically exempted under standards specified therein. The application of some of such requirements to contract air service provided under the proposed legislation would be inconsistent with the legislation's purposes, and thus the Board is authorized to relieve air carriers from any provision of Title IV, except section 401(k). (Section 401(k) sets forth certain basic obligations as between air carriers and their employees.)

Section 7(c) provides that the administrative procedure provisions of title 5 of the United States Code shall not be applicable to Board actions under the bill, and that such actions may be taken without notice and hearing. The main thrust of this section is to make clear that Board action under the proposed legislation is to be governed by procedures relating to the procurement process, rather than by the various requirements typically involved in licensing.

SECTION 8

This section authorizes the Board to prescribe such regulations and issue such orders as may be necessary to carry out the provisions of the bill.

SECTION 9

Section 9(a) requires the Board, prior to initiation of the first procurement process, to report to the Congress the geographical areas which are designated and the small communities which are selected.

Section 9(b) requires the Board to report to the Congress, within one year after enactment of the bill and annually thereafter so long as a contract is outstanding, the progress of the experimental program. The Board's final report, which must be submitted to the Congress within ninety days after termination of the last outstanding contract, must include, among other things, the quality and extent of air service provided pursuant to the bill, the cost to the Government, and the Board's evaluation of the contract method of providing subsidized air service.

As section 1 explicitly provides the purpose of the legislation is to authorize an experimental program by which the Congress would be enabled to evaluate the advantages and disadvantages of the contract method of providing small community air service. The purpose of section 9 is to ensure that the intended Congressional evaluation can be readily made by establishing procedures by which, without further Congressional action, the Congress will be kept informed of the progress and results of the program.

SECTION 10

This section authorizes such sums to be appropriated as may be necessary to carry out the provisions of the bill. Not more than $2 million may be appropriated in any fiscal year. Appropriated funds would remain available until expended.

SECTION 11

This section provides that the provisions of the bill shall terminate three years from the date of enactment of the bill. The disbursement of funds under, or the carrying out of, a contract entered into prior to the termination date is not affected by termination.

S. 3460

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the intent of the Congress in enacting this legislation to authorize the conduct of an experimental program by the Civil Aeronautics Board which would enable the Congress to evaluate the advantages and disadvantages of a contract method of providing air service to small communities.

SEC. 2. As used in this Act—

(1) "Air carrier" means any citizen of the United States who engages directly in, or proposes to engage directly in, air service.

(2) "Air service" means the carriage by aircraft, on a regularly scheduled basis, of persons or property as a common carrier for compensation or hire.

(3) "Board" means the Civil Aeronautics Board.

(4) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or

association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(5) "Small community" means a village, town, city or other locality in the United States not receiving unsubsidized air service on a daily, scheduled basis by a certificated air carrier.

SEC. 3. (a) The Board is hereby authorized to enter into contracts with air carriers by which such carriers undertake to provide air service to and from small communities selected by the Board pursuant to the provisions of section 5 of this Act.

(b) The Board shall award contracts hereunder in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except that provisions of such Act which are determined by the Board to be inconsistent with the purposes of the experimental program shall be inapplicable to such contracts.

(c) Prior to the award of a contract under this Act, the Board shall ascertain that the proposed contractor is capable of meeting, during the contract period, all requirements of the Board and of the Federal Aviation Administration for safety and reliability of operation.

(d) No contract under this Act may exceed three years in duration or be renewed. No increase in contract price may be made for the benefit of an air carrier after the contract has been entered into, except for increases in costs attributable to Governmental actions.

SEC. 4. In exercising the authority granted in section 3 of this Act, the Board shall designate the geographical areas in the United States within which small communities will be selected for the award of contracts for the provision of air service. In designating such areas, the Board shall consider, among other things, the need to assure sufficient diversity among the several geographical areas, in regard to such factors as travel patterns of the population, the nature of flying conditions, population density, and the nature of the air service, if any, that would be provided other than pursuant to this Act, in order that the areas considered together may afford a basis for the evaluation of the method of providing air service authorized by this Act.

SEC. 5. In selecting small communities located in the areas designated pursuant to section 4 of this Act, the Board shall consider, among other things, the following factors:

(1) The need for sufficient diversity among the various small communities selected, so that the communities considered together may afford a basis for the evaluation of the method of providing air service authorized by this Act;

(2) The availability and practicability of alternative means of transportation to and from the various small communities;

(3) The views of the small communities located within the geographical areas designated pursuant to section 4, and of the appropriate agencies of the government of each State lying partially or wholly within such geographical areas;

(4) The views of air carriers, if any, currently providing air service to, from or between any point or points in any geographical area designated pursuant to section 4; and

(5) The effect of such selection on the development of the nation's air transportation system.

SEC. 6. A contract between the Board and an air carrier for the provision of air service to a small community or communities shall include—

(1) The minimum number of frequencies the air carrier shall be required to operate to and from the small community or communities;

(2) The maximum rates and fares the air carrier may charge, subject to revision for such reasons and by such procedures as the Board may provide;

(3) Minimum passenger capacity requirements in respect to the aircraft to be operated by the air carrier; and

(4) Such arrangements as the Board may require by which the Government may be reasonably assured of reimbursement in the event of default by the air carrier, including reimbursement for the cost of obtaining another air carrier to provide the air service which the defaulting carrier undertook to provide.

SEC. 7. (a) The Board may suspend the certificate of any air carrier to provide air transportation on a subsidy-eligible basis to and from any small community in respect to which air service is to be provided under this Act. Any suspension pursuant to this section shall be for no greater period than the term of the contract under which such air service is to be provided.

(b) The Board may relieve any air carrier from any provision of Title IV of the Federal Aviation Act (except subsection (k) of section 401 thereof) in respect to air service to small communities pursuant to this Act if it finds that such action would be in the public interest.

(c) The provisions of sections 551–559 of title 5 of the United States Code shall not be applicable to actions of the Board under this Act. Such actions may be taken without notice and hearing.

SEC. 8. The Board may prescribe such regulations and issue such orders as may be necessary to carry out the provisions of this Act.

SEC. 9. (a) The Board shall, thirty days prior to the initiation of the first procurement process authorized herein, report to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce of the Senate the geographical areas designated pursuant to section 4 of this Act and the small communities selected pursuant to section 5.

(b) The Board shall, no later than one year from the date of enactment of this Act and annually thereafter so long as a contract entered into hereunder remains outstanding, report to the Congress on the progress of the experimental program authorized hereby. The Board's final report, which shall be submitted to the Congress within ninety days after termination of the last outstanding contract, shall include, among other things, the following: (1) the quality and extent of air service provided to small communities pursuant to this Act, (2) the cost to the Government of such service, and (3) the Board's evaluation of the relative advantages and disadantages of the contract method of providing air service to small communities.

SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act, but not more than $2,000,000 shall be appropriated in any fiscal year. Such sums shall remain available until expended.

SEC. 11. This Act shall terminate three years from the date of its enactment. The termination of this Act shall not affect the disbursement of funds under, or the carrying out of, any contract commitment, or other obligation entered into pursuant to this Act prior to the date of termination.

By Mr. STEVENS:

S. 3461. A bill to authorize the Secretary of Commerce to purchase in certain cases the catches of commercial fishermen which are prohibited from sale by restrictions imposed on domestic commercial fishing by a State or the Federal Government. Referred to the Committee on Commerce.

Mr. STEVENS. Mr. President, today I am introducing a bill and submitting an amendment to another bill designed to assist Alaska fishermen who are faced with economic ruin as the result of restrictions imposed upon them in their domestic commercial fishing by prohibitive Federal or State restrictions.

The bill I am introducing today authorizes the Secretary of Commerce to purchase these fish from any legal entity which first, owns fishing equipment; and second, engages in domestic fishing as its usual occupation. The catches of fish which may be purchased are those which the owner is prevented from selling by restrictions related to a deterioration in the quality of the aquatic environment which were imposed on or after January 1, 1971 by any State or Federal agency and which, in the judgment of the Secretary, impair the economic feasibility of any type of domestic fishing.

The Secretary is authorized to buy such fish at the fair market price in the area at the time of purchase. The "fair market price" is a term of art widely used in the law and easily determinable. Such fair market price must be evaluated in the specific locality, that is the specific town or city at which the catch is sold. The price must be determined as of the specific date of sale. Thus defined, these terms will provide the Secretary with practical guidelines for enforcement.

The total amount of such purchases in any calendar year from any one eligible owner may not exceed 50 percent of its gross earnings from domestic fishing operations. The Secretary is then authorized to dispose of these fish in any legal manner he deems appropriate. Any such purchase must be subject to the condition that the eligible owner assign to the Secretary any right he may have to recover damages for the act or omission resulting in the imposition of such Federal or State restrictions. The Secretary is also empowered to prescribe rules and regulations necessary to carry out the provisions of the act.

Finally, amounts not to exceed $4,000,000 for fiscal year 1973 and $5,000,000 for fiscal year 1974 are authorized.

Mr. President, this bill is specifically designed to alleviate a problem facing many small fishermen in southeast Alaska. It is the result of mercury pollution levels found in halibut by the Food and Drug Administration. This finding has resulted in a determination that halibut above a certain size may be dangerous and unfit for human consumption. Because of this finding, the industry has been unable to sell halibut over a certain size, such size varying depending upon the area of the ocean in which the halibut was caught. This problem has had devastating economic effects throughout southeast Alaska.

On October 8, 1971, the Subcommittee on Oceans and Atmosphere of the Senate Commerce Committee held hearings in Petersburg, Alaska, on this subject. At these hearings, the chairman of the

subcommittee, the distinguished Senator from South Carolina (Mr. HOLLINGS) and I were present. A large number of representatives from various fishing groups and governmental agencies were also present and testified before us. A report of these hearings is contained in report No. 92–41, which has just recently been printed. I believe that the need for this legislation is amply demonstrated by the testimony of the many witnesses who appeared and described in detail their personal accounts of the economic devastation they face as a result of this FDA determination.

For example, the situation facing the Petersburg Cold Storage Co. is typical. The Petersburg Cold Storage Co. is owned by 170 individual shareholders. It serves one of the small southeast Alaska towns which is directly affected. It was founded in 1926 by a local group of fishermen and merchants handling fish products, primarily halibut. It has operated successfully and has produced roughly 125,000,000 pounds of halibut, a yearly average of 3,000,000 pounds. Yearly ranges have been from 1 to 5 million pounds. The replacement value of the plant alone is $1,500,000 and it has an insurable depreciated value of $1,029,000. It employs 20 to 60 people per season. The average employment for a 12-month period is 28. The annual payroll runs about $400,000. Normally, they would have 20 to 30 halibut vessels outfitting in Petersburg at times other than the normal seining season. However, as a result of the mercury pollution level, last year only two vessels fished for halibut in the area immediately surrounding Petersburg. In a poll of 13 fishermen in nearby Kake, Alaska, in 1971 not a single fisherman indicated he felt he could economically fish for halibut, given the present restrictions. The same fishermen indicated that they felt that they did not believe that they would be able to fish in 1972 either.

Of course, solutions other than this bill are also being sought. However, even though it is not at all certain that a level as low as 0.5 part per million is necessary or even practical, I believe that one solution that must be considered is embodied in this bill. I urge that my colleagues give it their most serious attention.

Mr. President, the amendment I am introducing today attempts yet another solution to this problem. This amendment is identical to S. 875, a bill I introduced a little over a year ago. This amendment would provide partial reimbursement for losses incurred by commercial fishermen as the result of prohibitive Federal or State restrictions imposed on domestic commercial fishing. It would also authorize grants from the Secretary of Commerce to enable any eligible owner to meet the usual business expenses he was prevented from meeting as a result of these restrictions. Under the bill, if a fisherman accepts reimbursement, he automatically authorizes the Federal Government to file suit in his behalf against those who polluted the waters. Any amount collected in excess of the initial reimbursement and court costs would be turned over to the aggrieved fisherman by the Government which initiated the suit. Although it is reasonable to expect this method of reimbursement will ultimately be self-supporting, such a status will probably not be achieved for several years. Accordingly, my amendment appropriates $4 million for operation of the program during the first year and $5 million for each of the 4 succeeding years.

I request unanimous consent that the bill and amendment be printed in the CONGRESIONAL RECORD.

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

S. 3461

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 "Domestic Fishermen's Emergency Fish Purchase Act of 1972".

SEC. 2. As used in this Act—

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "domestic fishing" means commercial fishing which is subject to regulation or restriction under the laws of any State.

(3) The term "prohibitive Federal or State restrictions" means restrictions related to a deterioration in the quality of the aquatic environment and imposed on or after January 1, 1971, by any State or by any department or agency of the Federal Government which, in the judgment of the Secretary, impair the economic feasibility of any type of domestic fishing.

(4) The term "eligible owner" means any legal entity which—

(A) is the owner of fishing equipment, and

(B) is engaged in domestic fishing as its usual occupation.

SEC. 3. (a) The Secretary is authorized to purchase from any eligible owner, at the fair market price in the area at the time of purchase, any catch of fish which such owner is prevented from selling by prohibitive Federal or State restrictions.

(b) Any such purchase shall be subject to the condition that the eligible owner assign to the Secretary any rights he may have to recover damages for the commission of or failure to commit acts which resulted in the imposition of such prohibitive Federal or State restrictions.

(c) The total amount of purchases in any calendar year pursuant to this Act from any eligible owner shall not exceed an amount equal to 50 per centum of such owner's gross earnings from domestic fishing operations.

SEC. 4. The Secretary is authorized to dispose of fish purchased pursuant to this Act in such manner as he may prescribe.

SEC. 5. The Secretary shall prescribe such rules and regulations as are necessary to carry out the provisions of this Act.

SEC. 6. There is authorized to be appropriated to carry out the provisions of this Act an amount not to exceed $4,000,000 for the fiscal year ending June 30, 1973, and an amount not to exceed $5,000,000 for the fiscal year ending June 30, 1974.

AMENDMENT NO. 1107

At the end of the bill insert a new section as follows:

"a. As used in this Section—

"(1) The term 'Secretary' means the Secretary of Commerce.

"(2) The term 'domestic fishing' means commercial fishing which is subject to regulation or restriction under the laws of any State.

"(3) The term 'fishing equipment' includes nets, equipment, and vessels used in domestic fishing.

"(4) the term 'prohibitive Federal or State restrictions' means restrictions related to a deterioration in the quality of the aquatic environment and imposed on or after January 1, 1971, by any State or by any department or agency of the Federal Government which, in the judgment of the Secretary, impair the economic feasibility of any type of domestic fishing to such an extent as to reduce (1) by 50 per centum or more the fair market value, in the affected area, of fishing equipment principally useful for that type of fishing, or (2) by 20 per centum or more the market value of the commercial catch in the affected area which would have been realized in the calendar year concerned but for the imposition of such restrictions.

"(5) The term 'eligible owner' means any legal entity which—

"(A) is the owner of fishing equipment, and

"(B) was engaged in domestic fishing as his usual occupation for one month or more prior to the imposition of prohibitive Federal or State restrictions thereon.

"b. (1) Any eligible owner adversely affected by the imposition of prohibitive Federal and State restrictions in any calendar year may apply to the Secretary for a grant under this section for the purpose of enabling such owner to meet the usual business expenses which, but for the economic loss caused him by the imposition of such restrictions, such owner would ordinarily be able to meet.

"(2)(A) In any case in which paragraph (2) does not apply, a grant made by the Secretary under this section may not exceed an amount equal to 70 per centum of the yearly gross earnings from domestic fishing operations which the eligible owner lost in the calendar year as a result of the imposition of such Federal or State restrictions. In determining lost gross earnings from domestic fishing operations for an eligible owner under this paragraph, the Secretary shall subtract the amount of actual or estimated gross earnings from such operations in the year in which such Federal or State restrictions were imposed from the yearly gross earnings from domestic fishing operations made by such eligible owner in the last calendar year in which no prohibitive Federal or State restrictions affected such owners' operations.

"(3) In the case of an eligible owner who substantially increased his investment in fishing equipment for use in the calendar year in which such restrictions are imposed, as compared with his investment in fishing equipment in the calendar year immediately preceding such calendar year, a grant made under this section may not exceed an amount equal to 70 per centum of the estimated yearly gross earnings from domestic fishing operations which the eligible owner lost in the calendar year as a result of the imposition of such Federal or State restrictions. In estimating lost gross earnings under this paragraph, the Secretary shall take into account the size, type, and number of fishnets owned by the eligible owner and in use by him at the time of, or intended to be so used by him before, such Federal or State restrictions were imposed and the expected income per fishnet for that calendar year.

"(3) No grant may be made under this section unless application therefor is made before the close of the calendar year after the calendar year in which the prohibitive Federal or State restrictions concerned are imposed.

"Sec. 4. The Secretary shall attach such conditions and limitations with respect to a grant made under section 3 of this Act as he deems necessary or appropriate to protect the interests of the United States. The acceptance of a grant made under section 3 of this Act shall operate as an assignment to the Secretary of all rights of the eligible person receiving the grant to recover damages against any

party for committing or failing to commit acts which resulted in the imposition of the prohibitive Federal or State restrictions on the basis of which the eligible person obtained such grant. If the Secretary recovers damages by exercising any right assigned to him under this section, any amount so recovered in excess of the amount of the grant made under this Act and the administrative expenses incurred in exercising such right shall be paid to the eligible person concerned.

"d. There is authorized to be appropriated to carry out the purposes of this Act not to exceed $4,000,000 for the fiscal year ending June 30, 1972, and not to exceed $5,000,000 for each of the four succeeding fiscal years."

By Mr. HUMPHREY:

S. 3464. A bill to establish an executive department to be known as the Department of Education, and for other purposes. Referred to the Committee on Government Operations.

TO BUILD AMERICA'S EDUCATION RESOURCES

Mr. HUMPHREY. Mr. President, a central factor to be recognized in national policy planning for the decade of the 1970's must be the emergence of knowledge as the crucial resource of society. The highest national priority must now be given to policies and programs to assure the protection and development of America's human resources through education. To assure that this priority is effectively implemented, it must be given sharp visibility in the structure of the Federal Government itself. This demands the establishment of a Cabinet-level Department of Education.

The creation of a Department of Education is a vital component of the program to establish full educational opportunity in America, which I presented in the Senate on March 1, 1972. That program responds to the immediate issue of school transportation and assignment problems in our communities, by calling for a substantial and comprehensive Federal investment to guarantee to every American child an equal opportunity to obtain a quality education. It addresses the critical problem of rising education costs confronting all our school districts, as well as the serious imbalances between these districts in financing these costs, that leave the child of the urban ghetto and the poverty-stricken rural county to be condemned to an inferior education by the circumstance of residence, family income level, or race.

I have spelled out the new directions that must be taken toward establishing a comprehensive education program for America, to reverse the policies of the present administration that too often are characterized by confusion and last-minute response to crisis. We have a national responsibility to seize hold of and support the ongoing knowledge explosion as well as rapid and extensive developments in the broad field of learning processes. We must replace administration policies of vetoes and cutbacks of vitally needed funds for Federal educational assistance programs over the past 3 years, with a major financial commitment to provide the opportunity for a quality education from the preschool to the adult level, as a national investment that will be fully repaid.

Can we, by accepting a presidential veto, continue to ignore the serious need of 6.5 million preschool children for comprehensive early childhood development programs, during the period when over 50 percent of their intellectual growth occurs, and at a time when existing day care services across America are critically deficient, both quantitatively and qualitatively?

Will we do nothing to assist local school districts forced to cut back 15,700 positions for beginning teachers between 1970 and 1971, when the National Education Association has estimated that 565,000 additional teaching positions are needed to provide quality education programs for all children?

Are we content to overlook the right of several million handicapped children to special education services, or must the doors of our public school systems remain closed to them?

Can this administration expect parents of 6.2 million children, bearing the cultural and educational handicaps of segregated education and racial and economic isolation, and who are in critical need of compensatory aid and remedial skills program, to behave there is anything significant in the President's recently proposed Equal Educational Opportunities Act?

Let it be clear that this legislation proposes school desegregation criteria and remedies that, in effect, maintain existing school segregation. Let it be stated bluntly that this bill directs no substantial new Federal funds toward meeting the costs of improving educational opportunities for children in impoverished areas. Instead, it simply transfers $2.5 billion for this purpose already authorized or awaiting final enactment by Congress.

In October 1969, the President's Urban Education Task Force recommended a $5 to $7 billion a year increase in Federal funds for city schools. The White House response was the appointment of a panel to study title I of the Elementary and Secondary Education Act, enacted under the previous administration to target funds to improve educational opportunities for disadvantaged children. That panel duly reported that funds were misused and said it found little concrete evidence of improved schooling for children. And this theme has been repeatedly reiterated by the administration in justifying Federal budget requests for elementary and secondary education aid far below the level of congressional authorizations, and in vetoing additional appropriations enacted by Congress.

The administration record clearly demonstrating a low-priority concern for education includes:

The veto of fiscal 1970 appropriations for the Departments of Labor and Health, Education, and Welfare, including an additional $1.1 billion for education;

The veto of a $4.4 billion appropriation for Office of Education programs for the next fiscal year, subsequently overridden by Congress;

A cutback of $50 million in the fiscal 1972 budget for elementary and secondary education, followed by a decision to hold the line in funds for the educationally deprived in Fiscal 1973, at $1.6 billion;

A repeated effort by the administration to cut back aid to federally impacted areas—by $110 million in fiscal 1972, and by $177.5 million in the next fiscal year—where Federal installations and large numbers of employees place an especially heavy burden on local services such as education, and at a time when no school or community can afford a reduction in Federal aid;

And an administration budget for fiscal 1973 that, despite an extensive reshuffling of funds into new categories, fails to disguise a drop of $138 million from funding approved for the current fiscal year for existing Office of Education programs.

Now, however, there has been a major change of position by the administration regarding programs enacted several years ago and progressively strengthened by Congress to aid educationally deprived children and to address the problems of juvenile delinquency, handicapped children, migrant children, children trapped in poverty, and children whose language is other than English and who have a serious need for bilingual-bicultural programs. Now the President would affirm, as in his recent message to Congress, that where Elementary and Secondary Education Act, title I funds "have been concentrated, the results have been frequently encouraging and sometimes dramatic."

I have welcomed the President's recent commitment to the position I have argued for several years, that these funds much reach impoverished areas in sufficient amounts to have a real impact. I would point out, however, that were the President to assert leadership through a decision to request funds for the ESEA title I programs at the full level of congressional authorizations under the current aid formula, more than $6 billion could be immediately channeled to launch comprehensive education and development services for children in impoverished areas of our cities and rural areas. This would constitute a decisive advance by the Federal Government toward providing genuine help for these children, as contrasted with the President's proposed legislation which would merely amount to placing a White House label on congressional efforts to at least maintain a Federal commitment to these children in the absence of any clearly discernible presidential position.

I am deeply concerned that we may see a repeat of an administration stance taken again and again in numerous areas over the past 3 years—a contingency plan that corresponds to placing a contract with a construction firm to build a bridge across a river, but then making a downpayment that amounts to only one-third of the minimum bid accepted as essential in getting the job done, and then castigating the firm for its failure to reach the other shore.

Repeatedly, this administration has engaged in false economies in defending vetoes and cutbacks of funds enacted by Congress to meet critical human needs across America—the need for jobs, for better health care at reasonable cost, and

for educational opportunities, to cite only a few examples—with the argument that the development of America's human resources must be set aside in the interest of controlling inflation. With respect to education, the President commented in one veto message that: "Schools have as much at stake as anyone in our efforts to curb inflation."

I am encouraged that 1972 may witness a change in this administration position, however uncertain the duration of this change. I note, for example, the President's recognition, in his recent message, that there are human investments that are vital to America's strength and promise—that without additional funding for title I education aid to deprived children, "there is little chance of breaking the cycle of deprivation"; and that "making up for the years of past discrimination is not simply something that white Americans owe to black Americans—it is something the entire Nation owes to itself."

But I am seriously disturbed by indications that this administration's commitment to help America's educationally disadvantaged children may be limited and may continue to be undercut by a pervasive penny-pinching viewpoint. I note, for example, the President's view that compensatory aid grants under his proposed Equal Educational Opportunities Act would be limited primarily to basic instructional programs for language skills and mathematics. Mention is made of including supportive services such as health and nutrition, but the emphasis is lacking on these services and further comprehensive programs as being equally important in helping a child crippled by the ravages of poverty, the ignominy of racial discrimination, and the pervasive social atmosphere of hopelessness and despair.

It would appear that the President, to the contrary, has chosen to reject these components of a genuine and total education, in stating categorically that "schools exist to serve the children, not to bear the burden of social change." I submit that this statement sets up a false issue, and avoids the central question of what constitutes a genuine equal opportunity for a quality education for the child handicapped by barriers of racial and economic isolation.

Further indicators of limited administration commitment to establishing this equal opportunity, are found in the fiscal 1973 budget which proposes no new funds for assistance to the educationally deprived—a hold-the-line decision that amounts to a 10-percent cut in either children served or services given, due to increased costs of providing and concentrating compensatory education services.

Again, while the President in his message speaks of establishing an "educational bill of rights for Mexican-Americans, Puerto Ricans, Indians, and others who start under language handicaps," it should be clearly noted that it has been precisely bilingual-bicultural education that would be subsumed under a program consolidation proposed in the fiscal 1973 budget in a new education renewal site program. This is not the first time that an administration-proposed executive reorganization would necessarily entail a reduced priority for specific programs—in this instance, seriously affecting a program which needs increased visibility, not sublimation. As a result of insistent efforts by Senator CRANSTON and Senator PELL, the Office of Education has deferred further action to include the bilingual-bicultural education program in its education renewal site plan.

However, education itself would suffer a sharply reduced priority under the President's reorganization plan to create a Department of Human Resources—being placed in a "section" status three levels below the office of the Secretary of this new department.

THE KEY TO EFFECTIVE ACTION: A DEPARTMENT OF EDUCATION

I have discussed at length the serious implications of all this evidence to explain not only my opposition to the President's proposed Equal Educational Opportunities Act, but also my determination that policies reflecting a declining priority for education should be totally reversed.

I strongly believe that America's educational priorities, its investment in the development of our human resources, must be sharply focused and given an advocate at the highest level of Government. It is to this end, that I am today introducing legislation to establish a Department of Education.

We need this new Department to consolidate Federal programs and effectively marshall national resources to meet the critical education needs of children, youth, and adults across America. Last year it was estimated that 29 Federal agencies were spending over $12 billion on education—a 500-percent increase over 1962. But the central fact is that much of the impact of this investment is being dissipated, with little or no coordination of these programs being undertaken.

It is now clear that the Federal investment in public education must be substantially increased, to a level of at least one-third of total public resources—rather than the present level of less than 7 percent, representing a decline since 1968. Across the Nation, local school districts are exhausting their financial resources as expenses continue to mount. And recent court decisions, holding that disparities in local property-tax financing of education constitute a denial of the equal protection of the laws, present a further argument for sharply increased State and Federal assistance to equalize educational opportunity.

Within the present decade, the number of high school graduates each year will increase by 80,000, to a level of 3.8 million; while our colleges are faced with a projected rise of 3.8 million degree-credit enrolled students by 1979, to a level of 11.1 million.

By 1979, the costs of public and private colleges will soar to almost twice the present level of $25 billion. But there is also an increasing demand for widening the spectrum of educational opportunity—for providing comprehensive child development programs for the millions of preschool children of poor families and of mothers who want and need to work; and for opening a new range of opportunities to working youth and adults to continue their education.

All these facts point to the necessity for establishing a high-level authority and responsibility within the Federal Government for the development of a new educational policy for America. It is time to put the full educational resources of the Federal Government at the disposal of the American people.

I believe that my bill to establish a Department of Education offers the essential administrative framework for drafting that policy by which we can at last assure excellence, imagination, and full and equal opportunity in American education.

The legislation which I am introducing represents a consolidation and revision if important bills introduced last year by Senator RIBICOFF and Representative PERKINS. My bill proposes the consolidation of those Federal programs having a predominant education component, to greatly expedite the implementation of this reorganization. It also takes account of new education agencies to be established under the education amendments of 1972, current awaiting final conference action.

In addition to the reorganization and transfer of educational functions of Federal agencies, my bill provides for the establishment of a Federal Interagency Committee on Education to assure the effective coordination of all Federal programs affecting education. Moreover, there would be established a National Advisory Commission on Education, appointed by the President by and with the advice and consent of the Senate, to bring competent public participation to bear in the review of the administration of Federal education programs and in providing valuable counsel on the educational needs and goals of the Nation.

There must be no further delay in addressing the critical education needs of America. I believe there is an overwhelming national consensus that the time has come to establish a Department of Education to guarantee that these needs will now be met with the full resources of the Federal Government.

Mr. President, I ask unanimous consent that the full text of my bill to establish a Department of Education be printed in the RECORD.

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

S. 3464

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, There is hereby established an executive department which shall be known as the Department of Education (hereinafter referred to as the "Department"). There shall be at the head of the Department a Secretary of Education (hereinafter referred to as the "Secretary"), who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for level I of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964. The Department shall be administered under the supervision and direction of the Secretary.

FUNCTION AND PURPOSE

SEC. 2. The function and purpose of the Department shall be to promote the cause

and advancement of education throughout the Nation. To that end the Secretary shall, among his responsibilities, (1) advise the Persident with respect to the progress of education; (2) develop and recommend to the President appropriate policies and programs to foster the orderly growth and development of the Nation's educational facilities and resources; (3) exercise leadership at the direction of the President in coordinating Federal activities affecting education; (4) conduct continuing comprehensive surveys, collect data, and make available, findings, on the progress of education; (5) provide information and such other assistance as may be authorized by the Congress to aid in the maintenance of efficient school systems; and (6) encourage comprehensive planning by the State and local governments with a view to coordinating Federal, State, and community educational activities at the local level.

UNDER SECRETARY AND OTHER OFFICERS

SEC. 3. There shall be in the Department an Under Secretary, four Assistant Secretaries, and a General Counsel each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such functions and duties as the Secretary may prescribe. The Under Secretary shall receive compensation at the rate prescribed for level III of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, and the Assistant Secretaries and General Counsel shall receive compensation at the rate prescribed for level IV of such Schedule. The Under Secretary (or during the absence or disability of the office of Under Secretary, an Assistant Secretary determined according to such order as the Secretary shall prescribe) shall act as Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.

PROVISIONS OF LAW APPLICABLE TO THE DEPARTMENT

SEC. 4. Except to the extent inconsistent with this title, all provisions of law applicable to the executive departments generally shall apply to the Department.

SEAL

SEC. 5. The Secretary shall cause a seal of office to be made for the Department, of such design as the President shall approve, and judicial notice shall be taken thereof.

DELEGATION OF AUTHORITY

SEC. 6. The Secretary may, without being relieved of his responsibility therefor, and unless prohibited by some specific provision of law, perform any function vested in him through or with the aid of such officials or organizational entities of the Department as he may designate.

TRANSFERS TO DEPARTMENT

SEC. 7. (a) The United States Office of Education, together with all of its functions, personnel, property, records, obligations, commitments, and unexpected balances of appropriations, allocations and other funds is hereby transferred to the Department, and all functions of the Secretary of Health, Education, and Welfare being administered through such Office, and all functions of the Secretary of Health, Education, and Welfare with respect to such Office, are transferred to the Secretary.

(b) The following additional functions of the Secretary of Health, Education, and Welfare are hereby transferred to the Secretary:

(1) With respect to and being administered by the Secretary of Health, Education, and Welfare through the Office of Child Development;

(2) With respect to all laws dealing with the relationship between Gallaudet College, Howard University, and American Printing House for the Blind, and the Department of Health, Education, and Welfare.

(3) Under section 394 of the Communications Act of 1934, relating to Federal grants for the construction of television broadcasting facilities to be used for educational purposes; and

(4) Under the Drug Abuse Education Act of 1970.

(c) There are hereby transferred to the Secretary all functions of the Director of the Office of Economic Opportunity under sections 222(a) (1) and (2) of the Economic Opportunity Act of 1964 relating to the Project Headstart and Follow Through programs.

(d) There are hereby transferred to the Secretary all functions of the Secretary of Defense with respect to the operation of schools for dependents of members of the Armed Forces.

(e) There are hereby transferred to the Secretary all functions of the Secretary of Agriculture with respect to the operation of the Graduate School, United States Department of Agriculture.

(f) There are hereby transferred to the Secretary all functions of the Secretary of Housing and Urban Development under title IV of the Housing Act of 1950 relating to college housing.

(g) There are hereby transferred to the Secretary all functions of the National Science Foundation which the Director of the Office of Management and Budget determines relate to instructional personnel development programs, instructional program development, and programs in computer innovations designed for use in education.

(h) The Bureau of Occupational, Career and Adult Education, the National Foundation for Post Secondary Education, the National Institute of Education, and the Bureau of Indian Education established under the provisions of the Educational Amendments of 1972, and all functions of the Secretary of Health, Education, and Welfare, and all functions of the Commissioner of Education being administered through each such Bureau or Foundation, are transferred to the Secretary of Education.

(i) All personnel, property, leases, obligations and commitments and expended balances of appropriations, allocations, and other funds which the Director of the Office of Management and Budget determines are to be used with respect to any office, agency, bureau, foundation, or function transferred under the provisions of this section, are transferred to the Department of Education.

ADDITIONAL TRANSFERS

SEC. 8. The President is authorized to transfer to the Department of Education, any other agency or instrumentality of the Federal Government which he determines has functions relating to education and should be transferred to the Department of Education to promote efficiency in Government and to carry out the purposes of this Act. Such transfers shall be completed within 180 days after the date of enactment of this Act, and a report describing such transfers shall be submitted to the Congress not later than 30 days thereafter.

FEDERAL INTERAGENCY COMMITTEE ON EDUCATION

SEC. 9. (a) There is hereby established a Federal Interagency Committee on Education (hereafter referred to as the "Committee.")

(b) The Committee shall study and recommend such actions as may be necessary to assure effective coordination of Federal programs affecting education, including—

(1) development of Federal programs in accordance with the educational goals and policies of the Nation;

(2) consistent administration of policies and practices among Federal agencies in the conduct of similar programs;

(3) full and effective communication among Federal agencies to avoid unnecessary duplication of activities;

(4) adequate procedures for the availability of information on educational matters requested by the Secretary; and

(5) full and effective cooperation with the Secretary on such studies and analyses as are necessary to carry out the purposes of this Act.

(c) The Committee shall, within 90 days of the enactment of this Act, advise the President with respect to his responsibilities under section 8 of this Act.

(d) The Committee shall be composed of the Secretary, who shall be the Chairman, and one appropriate representative of each of the following: The Department of State, the Department of Defense, the Department of Agriculture, the Department of Labor, the Department of Health and Welfare, the Department of Housing and Urban Development, the National Science Foundation, the Atomic Energy Commission, the National Aeronautics and Space Administration, the National Endowments for the Arts and the Humanities, and the Office of Economic Opportunity. Other members may be added by Executive Order of the President as he determines may be necessary.

(e) The Chairman may invite Federal agencies in addition to those which are represented on the Committee under the provisions of subsection (d) of this section to designate representatives to participate in meetings of the Committee on matters of substantial interest to such agencies which are to be considered by the Committee.

(f) The Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Executive Director of the Domestic Council, and the Director of the Office of Science and Technology may each designate a member of his staff to attend meetings of the Committee as observers.

(g) Each Federal agency which is represented on the Committee under the provisions of subsection (d) of this section, shall furnish necessary assistance to the Committee in accordance with section 214 of the Act of May 3, 1945 (31 U.S.C. 691).

NATIONAL ADVISORY COMMISSION ON EDUCATION

SEC. 10. (a) There is hereby established a National Advisory Commission on Education (hereafter referred to as the "National Commission") composed of fifteen members appointed by the President, by and with the advice and consent of the Senate from among individuals—

(1) who are familiar with the educational needs and goals of the United States,

(2) who have competence in assessing the progress of educational agencies, institutions, and organizations in meeting those needs and achieving those goals,

(3) who are familiar with the administration of State and local educational agencies and of institutions of higher education, and

(4) who are representative of the mass media, industry and the general public.

Members shall be appointed for terms of three years, except that (1) in the case of initial members, one-third of the members shall be appointed for terms of one-year each and one-third of the members shall be appointed for terms of two-years each, and (2) appointments to fill the unexpired portion of any term shall be for such portion only.

(b) The National Commission shall—

(1) review the administration of, general regulations for, and operation of Federal education programs;

(2) advise the Secretary and other Federal officials with respect to the educational needs and goals of the Nation and assess the progress of appropriate agencies, institutions, organizations of the Nation in order to meet those needs and achieve those goals;

(3) conduct objective evaluations of specific education programs and projects in order to ascertain the effectiveness of such

programs and projects in achieving the purpose for which they are intended;

(4) make recommendations (including recommendations for changes in legislation) for the improvement of the administration and operation of Federal education programs;

(5) consult with Federal, State, and local and other educating agencies, institutions, and organizations with respect to assessing education in the United States and the improvement of the quality of education, including—

(A) areas of unmet needs in education and national goals and the means by which those areas of need may be met and those national goals may be achieved;

(B) determination of priorities among unmet needs and national goals; and

(C) specific means of improving the quality and effectiveness of teaching, curricula, and educational media and of raising standards of scholarship and levels of achievement;

(6) conduct national conferences on the assessment, improvement, and renewal of education, in which national and regional education associations and organizations, State and local education officers and administrators, and other education related organizations, institutions, and persons (including parents of children participating in Federal education programs) may exchange and disseminate information on the improvement of education; and

(7) conduct, and report on, comparative studies and evaluations of education systems in foreign countries.

(8) advise and assist in the coordination of all the advisory bodies to Federal education programs.

(c) The National Commission shall make an annual report, and such other reports as it deems appropriate, concerning its findings, recommendations, and activities to the President for submission to the Congress once each year.

(d) In carrying out its responsibilities under this section, the National Commission shall take, together with the Secretary, whatever action is necessary to carry out section 438 of the General Education Provisions Act, to devise a manageable and effective advisory structure for the Department. The National Commission shall advise the Secretary on the number of advisory bodies that are necessary and the manner in which such bodies relate to one another. The National Commission shall consult with the National Advisory Council on the Education of Disadvantaged Children, the National Advisory Council on Supplementary Centers and Services, the National Advisory Council on Education Professions Development, the National Advisory Council on Educational Research and Development and such other advisory councils and committees as may be appropriate to carry out its functions under this subsection. All Federal agencies are directed to cooperate with the National Commission in carrying out its function under this subsection.

The National Commission is authorized to engage such technical assistance as may be required to carry out its functions and the Secretary shall, in addition, make available to the National Commission such secretarial, clerical, and other assistance and such pertinent data prepared by the Department as the National Commission may require to carry out its functions.

(f) Members of the National Commission who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the National Commission or while otherwise engaged in the business of the National Commission, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service for grade GS–18 under section 5332 of title 5, United States Code, including travel time, and while so serving on the business of the National Commission 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, for purposes employed intermittently in the Government service.

(g) The President shall appoint the National Commission not later than thirty days after the date of enactment of this Act.

TRANSFER MATTERS

SEC. 11. All laws relating to any agency or function transferred under this Act shall, insofar as such laws are not inapplicable, remain in full force and effect. Any transfer of personnel pursuant to this title shall be without change in classification or compensation, except that this requirement shall not operate to prevent the adjustment of classification or compensation to conform to the duties to which such transferred personnel may be assigned. All orders, rules, regulations, permits, or other privileges made, issued, or granted by any agency or in connection with any functions transferred by this title, and in effect at the time of the transfer, shall continue in effect to the same extent as if such transfer had not occurred, until modified, superseded, or repealed. No suit, action, or other proceeding lawfully commenced by or against any agency or any officer of the United States acting in his official capacity shall abate by reason of any transfer made pursuant to this title, but the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect, showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the appropriate agency or officer of the United States.

ANNUAL REPORT

SEC. 12. The Secretary shall, as soon as practicable after the end of each calendar year, make a report to the President for the submission to the Congress on the activities of the department during the preceding calendar year. Such report shall also contain objective data on enrollments, expenditures, numbers of teachers, administrative, supervisory and auxiliary personnel, numbers of professionals who lack full qualifications, needs for classroom and other construction, special needs of critical areas such as urban and rural areas, and similar data.

CONFORMING AMENDMENTS

SEC. 13. (a) Section 19(d)(1) of the Act of June 25, 1958, is hereby amended by striking out "Secretary of Health, Education, and Welfare" at the end thereof and inserting the following: "Secretary of Health and Welfare, Secretary of Education."

(b) Section 158 of the Revised Statutes (5 U.S.C. 1) is amended by adding at the end thereof: "Eleventh. The Department of Education." and by striking out "Health, Education, and Welfare" and inserting "Health and Welfare."

(c) Any reference to the Office of Education or the Commissioner of Education, in any other law, rule, regulation, certification, directive, instruction, license, or other official paper in force on the effective date of this title shall be deemed to refer and apply to the Department of Education or the Secretary of Education, as may be appropriate.

(d) Any reference to the Department of Health, Education, and Welfare or the Secretary of Health, Education, and Welfare in any other law, rule, regulation, certificate, directive, instruction, license, or other official paper in force on the effective date of this title shall be deemed to refer and apply to the Department of Health and Welfare and the Secretary of Health and Welfare, respectively.

EXPENDITURES AUTHORIZED

SEC. 14. The Secretary is authorized to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for lawbooks, books of reference and periodicals, and for printing and binding) as may be necessary to carry out the provisions of this Act, and as may be provided for by the Congress from time to time.

APPROPRIATIONS AUTHORIZED

SEC. 15. There are authorized to be appropriated such sums as may be necessary to enable the Department to carry out the provisions of this title and to perform any other duties which may be imposed upon it by law.

EFFECTIVE DATE

SEC. 16. The provisions of this Act shall be effective on its date of enactment, except that section 7 shall be effective within ninety days following such date.

ANNUAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S 2504

At the request of Mr. HUMPHREY, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 2504, a bill to amend title XVIII of the Social Security Act to include, among the home health services covered under the insurance program established by part B of such title, nutrition services provided by or under the supervision of a registered dietitian.

S. 3044

At the request of Mr. HUMPHREY, the Senator from Hawaii (Mr. INOUYE), the Senator from Tennessee (Mr. BROCK), the Senator from New Jersey (Mr. CASE), the Senator from Oregon (Mr. HATFIELD), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 3044, a bill to amend the Civil Rights Act of 1964 in order to prohibit discrimination on the basis of physical or mental handicap in federally assisted programs.

S. 3415

At the request of Mr. HRUSKA, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 3415, a bill to amend section 3401 of title 18, United States Code, to authorize U.S. magistrates to use the probation provision of the Youth Corrections Act, and for other purposes.

SENATE JOINT RESOLUTION 67

At the request of Mr. HART, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of Senate Joint Resolution 67, authorizing the President to issue a proclamation designating the last full calendar week in April of each year as "National Secretaries Week."

SENATE RESOLUTION 292—SUBMISSION OF A RESOLUTION RELATING TO THE 88TH BIRTHDAY OF HARRY S. TRUMAN

(Referred to the Committee on the Judiciary.)

Mr. HUMPHREY. Mr. President, I send to the desk for appropriate reference a resolution to honor the 88th birthday of a great American, Harry S. Truman, in the hope that the committee will, within the time frame between now and May 8, be able to consider the resolution and report it back to us.

The PRESIDING OFFICER (Mr. NELSON). The resolution will be received and appropriately referred.

Mr. GOLDWATER. Mr. President, will the Senator permit my name to be added as a consponsor of the resolution?

Mr. HUMPHREY. I ask unanimous consent that the name of the Senator from Arizona (Mr. GOLDWATER) be added as a consponsor of the resolution.

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

The resolution reads as follows:

S. RES. 292

Whereas on May 8, 1972 Harry S. Truman will celebrate his 88th birthday;

Whereas Harry S. Truman has devoted his entire life to the service of his Nation, as a Major in the first World War, as a distinguished Senator from the great state of Missouri, as a Vice President under Franklin Delano Roosevelt, as President of the United States;

Whereas Harry S. Truman has guided our Nation through some of its most difficult periods, in times of war and peace, always demonstrating compassion, understanding and qualities of leadership which are unexcelled in our Nation's great history;

Whereas this man is considered to be one of America's greatest Presidents and citizens;

Whereas he has continued to serve his country as a counselor to Presidents; now, therefore, be it

Resolved, That the Senate of the United States salutes this great American for his extraordinary and extensive service to his Nation, and extend its heartiest congratulations to him on his 88th birthday, and wishes him and his wonderful wife, Bess, continued good health and happiness in the years ahead.

FISHERMEN'S PROTECTIVE ACT AMENDMENTS OF 1972—AMENDMENT

AMENDMENT NO. 1107

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

Mr. STEVENS submitted an amendment intended to be proposed by him to the bill (H.R. 7117) to amend the Fishermen's Protective Act of 1967 to expedite the reimbursement of U.S. vessel owners for charges paid by them for the release of vessels and crews illegally seized by foreign countries, to strengthen the provisions therein relating to the collection of claims against such foreign countries for amounts to be reimbursed, and for certain other amounts, and for other purposes.

Mr. STEVENS' remarks when he submitted the amendment appear under "Statements on Introduced Bills and Joint Resolutions."

PROPOSED DEPARTMENT OF HEALTH—AMENDMENT

AMENDMENT NO. 1108

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

Mr. HARTKE submitted an amendment intended to be proposed by him to the bill (S. 3432) to establish a Department of Health.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 895

Mr. PEARSON. Mr. President, I ask unanimous consent that at the next printing of the bill, Senators BAKER, BEALL, BENTSEN, BIBLE, COOK, COTTON, CRANSTON, HUMPHREY, INOUYE, MAGNUSON, METCALF, PASTORE, and STEVENS be added as cosponsors of amendment No. 895 to H.R. 1. This amendment would provide persons 65 or older a phased annual tax credit of up to $300 for property taxes or rent paid on their residence.

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

AMENDMENT NO. 989

At the request of Mr. GURNEY, the Senator from California (Mr. CRANSTON) was added as a cosponsor of amendment No. 989, intended to be offered to the bill (H.R. 1), the Social Security Amendments of 1972.

AMENDMENT NO. 1100

At the request of Mr. STEVENSON, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of amendment No. 1100, intended to be proposed to the bill (S. 3193) the Economic Opportunity Amendments of 1972.

ANNOUNCEMENT OF THE CONTINUATION OF HEARINGS ON S. 3140, THE INTERGOVERNMENTAL COOPERATION ACT OF 1972

Mr. CHILES. Mr. President, on behalf of the distinguished chairman of the Subcommittee on Intergovernmental Relations, Mr. MUSKIE, I should like to announce that on April 17, the subcommittee—of the Committee on Government Operations—will resume consideration of S. 3140, the Intergovernmental Cooperation Act of 1972.

S. 3140 is directed to strengthening the management of our categorical grant-in-aid system, the chief means by which the Federal Government helps the States and localities solve national problems. It is a necessary supplement to the Intergovernmental Cooperation Act of 1968—Public Law 90–577—the first major piece of legislation to improve administrative relationships between the Federal, State, and local levels of government.

The hearing will be held in room 3302 of the New Senate Office Building, beginning at 10 a.m.

Anyone wishing to file a statement with respect to the proposed legislation should notify the chief clerk of the subcommittee, Mrs. Lucinda Dennis. She can be reached by calling 225–4718.

NOTICE OF HEARING ON S. 3419

Mr. RIBICOFF. Mr. President, pursuant to the action of the Senate referring S. 3419 to the Committee on Government Operations for consideration of titles I and II of that bill, the Subcommittee on Executive Reorganization will hold hearings on those parts of the legislation on April 20 and 21, 1972. The hearings will be in room 3302 of the New Senate Office Building and will begin at 10 a.m.

ANNOUNCEMENT OF HEARINGS ON AMENDMENTS TO THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Senator from New Jersey (Mr. WILLIAMS), I ask unanimous consent to have printed in the RECORD an announcement of hearings on amendments to the Longshoremen's and Harbor Workers' Compensation Act.

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

STATEMENT BY SENATOR WILLIAMS

The Subcommittee on Labor will hold hearings on S. 2318, S. 525, and S. 1547, bills to amend the Longshoremen's and Harbor Workers' Compensation Act, on Wednesday, May 3, and Thursday, May 4, in room 4232, New Senate Office Building, at 10 a.m. Interested parties desiring to present testimony concerning this legislation are requested to contact the Labor Subcommittee in room G–237, New Senate Office Building. I anticipate that two additional days of hearings will be scheduled in the near future.

I have asked the distinguished Senator from Missouri (Mr. Eagleton) to preside at the hearings of the subcommittee on these bills.

ADDITIONAL STATEMENTS

GIANT FOOD STORES MISLEADING ADVERTISING

Mr. CURTIS. Mr. President, it is time that Congress look for the facts. Giant Food Stores were paying less for their beef at wholesale when they ran their Esther Peterson ads in the Washington papers on March 21 than they were paying at the time of the wage-price freeze last August 15.

This is borne out by figures kept by the Livestock Market News Service at the Department of Agriculture.

On Friday, August 13, 1971, the last market day before the wage-price freeze was declared by President Nixon, the average price of Midwest choice beef carcasses, 500 to 800 pounds, was $54 per hundredweight.

On Tuesday, March 21, 1972, when Mrs. Peterson advised consumers to boycott beef, the average price of the same type and grade carcasses was $53.25, down 75 cents a hundred from the prefreeze price.

Giant buys most of its beef carcasses through Midwest markets.

I understand that Assistant Secretary of Agriculture Dick Lyng confronted Mrs. Peterson and the president of the Giant Food chain, Mr. Joseph B. Danzansky, with this information.

When they told Mr. Lyng that they did not believe his information was correct, he suggested that Mr. Danzansky call in the company's beef buyer and ask him. I understand that Mr. Danzansky did this, and Giant's buyer confirmed this information in the presence of Mr. Lyng, Mrs. Peterson, and Mr. Danzansky.

Now the Giant Food Stores and Mrs. Peterson are taking credit publicly for driving the prices of beef down.

This type of phony consumerism must be investigated and exposed. It is not only misleading to consumers, but in this instance it has cost farmers and ranchers thousands of dollars, and perhaps ultimately it will cost them millions. Yesterday's carcass price for Midwest choice beef was down to an average of $51.75, or $2.25 below the level at the time of the August 15 freeze. Hog prices also are dropping dangerously. Farmers and

ranchers, whose prices already were below those not only at the time of the August 15 wage-price freeze but also below those of 20 years ago, are being forced to bear the brunt of still lower prices to make up for higher costs and profits of other segments of industry. This is wrong, and must be fully investigated by appropriate Government agencies and committees of Congress.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement made by the Giant Food Stores to their stockholders which clearly shows that it was not the price of cattle and hogs that caused the Giant to raise their retail prices.

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

TO OUR SHAREHOLDERS

Our thirty-fifth year of business was a year of challenge, action, and excitement on many fronts.

Financially, Giant achieved record sales in fiscal 1971 of $476.9 million. Costs, however, continued to rise sharply as a result of inflation as evidenced by a labor contract settlement which boosted wages 13 per cent. As anticipated, net earnings for the quarter in which we went discount and settled the labor contract showed a deficit which adversely affected earnings for the year. As indicated in the chart on the left, profits again began a steady upturn during the third quarter and continued through the balance of the fiscal year. At years' end we had matched the earnings of the last 16 weeks of the previous fiscal year. Net earnings for the year were $4.2 million.

Net earnings per share were $1.44 for 1971 based on the average number of shares outstanding, compared to $2.15 for fiscal 1970.

In operations, we converted to a chain-wide discount price program in August. As we predicted at the time, a sharp drop in protfis followed the reduction of our margins. Discount start-up costs were coupled with a record labor increase of $7.5 million shortly thereafter. In order to offset the cost of the wage settlement, maintain the lower profit margins inherent to a discount policy, and in anticipation of an additional $8 million wage increase during fiscal 1972, we made the difficult decision to discontinue our successful Top Value trading stamp promotion at the end of October.

We have received much attention and many accolades for our consumer program, detailed in this report. The decade of the '70's has been called the decade of consumerism and ecology. We have been most active in these important areas.

During the past year, Giant has told the public that "Action Speaks Louder Than Words." Looking ahead, we believe that our present and planned actions—including discount pricing and the innovative consumer programs described in this report—will assure healthy and sustained growth for Giant in the coming years.

TAX REFORM AND REDISTRIBUTION OF INCOME—PROPOSALS BY SENATOR GEORGE McGOVERN

Mr. PROXMIRE. Mr. President, income tax day is 10 days away. On that day most of us will turn over a substantial portion of our incomes to the Commissioner of Internal Revenue.

Paying income taxes is not a pleasant chore. But it is made much less pleasant by the knowledge that all Americans do not suffer equally. A number of Americans pay no taxes at all. And some of these are among the wealthiest people in the country.

The Senator from South Dakota (Mr. McGOVERN) has pointed out that in 1969, the latest year for which figures are available, 21,317 people earned more than $20,000 a year but paid no tax. Fifty-six people who had incomes in excess of $1 million paid no tax.

That comes as quite a blow to the average wage earner who each year forks over $1,000 of his $10,000 salary to Uncle Sam.

Mr. President, Senator McGOVERN sets out a number of proposals in the areas of corporate taxes, estate and gift taxes, and State and local taxes. I think these proposals deserve the careful consideration of every Senator.

I ask unanimous consent that Senator McGOVERN's program be printed in the RECORD.

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

TAX REFORM AND REDISTRIBUTION OF INCOME—PROPOSALS BY SENATOR GEORGE MCGOVERN

INTRODUCTION

Many Americans feel themselves the victims of economic discrimination at the hands of the Federal tax system. Although that system is, in many respects, one of the most enlightened in the world, it is an undeniable fact that millions of ordinary, working middle income families pay their taxes as required by law, while many of the wealthy use a variety of devices to escape their rightful tax burden. At the same time, the man in the middle sees billions of dollars going into welfare programs that don't work. In short, many Americans pay their taxes dutifully and feel that others are exploiting the tax and welfare systems.

The most urgently needed change in our systems of taxation and public assistance is to place far greater emphasis on fairness. Each American should feel that he is getting his money's worth and that he is being treated exactly like every other American. Each American should pay his fair share and each American should receive his fair share. That is clearly not the case now.

TAX REFORM

The purpose of taxation

In the United States, taxes pay for those activities which we wish to have carried out by government rather than by the private sector. The costs are supposed to be carried by each income group paying its share and by those within each income group paying a similar amount. The progressive tax system asks those who are better off to bear a greater share of the load than those who have less ability to pay. In general, the progressive system is one of the most positive elements of our tax system.

Individual income taxes

Previous efforts at tax reform have failed to bring our system closer to a truly progressive one. Every effort at reform shows that the cloth of our tax codes is so worn that every patch rips another hole somewhere else. Even more importantly, efforts to promote fairness by giving everyone his own loophole are slowly dismantling the progressive federal income tax.

The actual tax system is just about half as progressive as it is supposed to be, according to the tax rates adopted by Congress. While nominal rates range from 0.1 percent at low incomes to 69.2 percent for those with incomes over $1 million per year, actual rates on average range from 0.7 percent to 34 percent.

Two taxpayers with the same annual income pay quite different taxes. A factory worker or a school teacher whose taxes are withheld from his wages cannot take advantage of loopholes. They may expect to pay almost $1,000 in taxes on earnings of $10,000. A wealthy person who receives $10,000 income from state and local bonds will pay no Federal taxes at all. Clearly this system is unfair.

And these inequities are not theoretical. On the basis of 1969 tax returns, the last year for which figures are available, some 21,317 people earning more than $20,000 paid no Federal taxes whatsoever. That includes 56 people with incomes in a single year of $1,000,000 or more.

Because the effort to close one loophole at a time has been a failure and because to do so would still leave a great number of inequities until all were closed, we should shift to a really effective minimum tax. While a minimum tax was created in 1969 tax legislation, it is actually windowdressing and is not effective. Recent reports indicate that some who earn over $1 million still pay no taxes.

I propose a minimum income tax so that the rich could not avoid their share of the tax burden no matter what loopholes they used. One possible formula would be a minimum income tax to apply to all those with total incomes in excess of $50,000. The entire income of any person in this range would be subject to payment of taxes at a rate of 75 percent of the current statutory rates at the rate that they would have to pay if there were no loopholes. All income regardless of source would be included. (Of course, if the computed tax exceeds the minimum tax, it would be payable.)

If this minimum income tax were now in effect it would bring in approximately $5 billion during the present fiscal year and $6 billion in fiscal 1973. That would amount to about a 7 percent increase in receipts from the individual income tax. This increase would be paid by the wealthiest 411,000 out of the 76 million Federal taxpayers.

This basic tax reform would not unfairly penalize the wealthy just because they were well off. It would simply insure that they could not dump their tax load onto the backs of already hard-pressed middle income taxpayers.

Corporate taxes

The strength of the American economy is due mainly to the dynamic growth of the private sector led by corporations and other businesses. It is sound public policy to create the conditions for business to function effectively.

The Federal tax system has been used to help the corporations. As Joseph Pechman, one of the leading tax experts in the United States points out: "A special tax on the corporate form of doing business is considered appropriate because corporations enjoy special privileges and benefits." In order to stimulate corporate economic activity, the Federal government can and does alter tax rates. That is the principal form of assistance that has recently been given.

The present corporate tax rate is 48 percent of the taxable base defined by law. (Of this 22 percent is the normal tax which applies, without the 26 percent surtax, to the first $25,000 of corporate net income. This feature is of special benefit to small businesses—some 77 percent of the taxpaying corporations. It should be maintained.)

In each post-war recession, demands have arisen to stimulate the economy through corporate tax reductions. These have taken the form, not of overt rate reductions, but of covert rate reductions in the form of increased depreciation allowances and special devices such as the investment tax credit. Such devices transfer profits from the taxable category to the untaxable category. In the process, the corporate income tax is gradually being abolished.

Because of steady reductions in the taxable base over the past twenty years, the effective corporation income tax rate has been cut in half. There is a real question about how much farther we can go.

The time has come to end the dismantling of the corporation income tax and to reestablish a fair balance between personal and corporate income tax collections. As a result, I have opposed the new depreciation guidelines and the investment tax credit. Special loopholes, such as percentage depletion, need to be phased out, but a broad balance also needs to be established between taxable and untaxable earnings of corporations. As it is, we have tipped that balance too far in the direction of untaxable earnings.

I propose that the actual corporation income tax be returned to its 1960 level by the elimination of the special loopholes that have been opened since then. (About two-thirds of the gap between the present level and the 1960 level results from Nixon Administration cuts in the last year.)

This reform of the corporation income tax would raise approximately $9 billion in the current fiscal year and about $17 billion in fiscal 1973 (based on Administration estimates of increased corporate activity.)

This proposal for increasing the corporation income tax rate does not mean reduced government assistance to business. If the entire McGovern economic program were to be applied, there would be more stimulus to business than is available from the tax privileges now in effect. This program includes an immediate $10 billion fiscal stimulus to create new jobs and use underutilized capacity, economic conversion from a war to a peace economy with the extensive use of government contracting for specific purposes and the Minimum Income Grant, discussed below, which would greatly stimulate consumer purchases. Nothing spurs profits like a strong full employment economy, which has the highest priority in my economy program.

In short, our corporations must be healthy and growing if our economy is to prosper. But we have a wider range of tools at our disposal than perpetual reductions in the corporation income tax.

Estate and gift taxation

Most Americans subscribe to a fundamental belief of our Founding Fathers that we should be allowed to keep a fair proportion of what we earn but should not be allowed to inherit great wealth. Yet, in practice, the loopholes in our gift and inheritance taxes are much greater than those in our income taxes. Just 9 percent of all families own 50 percent of all private assets. More than a quarter of all private assets are owned by less than 1 percent of the population. Although some of these fortunes are based on earned income, most are based on inherited wealth.

Estate and gift tax rates are high. But actual rates are a tiny fraction of the theoretical rates.

Estate and gift taxation should be reformed in the same manner as the income tax. Instead of proceeding to close loopholes, one by one, a whole new system needs to be constructed.

Gift and inheritance taxes should shift from a tax on the estate or giver to a lifetime cumulative tax on the recipient. This shift would make it possible to prevent tax avoidance and would be more fair, because it would regard the money received as income to the recipient, which it is.

The cumulative lifetime tax on recipients should take the following form: A base amount would be exempt from taxation—an amount now set by the government at $60,000. Then a progressive tax, reaching an upper limit of 77 percent, the current statutory ceiling, would be levied on an estate worth, say, $500,000 or more. The base exemption should be increased when the estate contains a wholly-owned proprietorship.

While it is impossible to calculate the exact amount of new revenues resulting from this proposal, a conservative estimate would indicate the doubling of present tax receipts from estate and gift taxes. That would mean additional tax revenues of $4 billion in the present fiscal year and $5 billion in fiscal 1973.

State and local taxes

While the Federal tax system is generally progressive, with room for improvement, the state and local tax systems are far less progressive and do not respond as directly to changes of income of taxpayers. It is well known that there has been excessive reliance on the property tax.

The property tax revolt may be a major issue in the coming months. The Federal government may have to step in to allow for a reduction of property taxes used to support education—perhaps their complete removal. As I indicated in July 1971 in my proposals on revenue sharing, the states should be given the incentive to raise more of their revenues from progressive income taxe. In addition, the Federal government should take over at least a third of the total bill for primary and secondary education. Funds should be distributed to school districts in line with an equalization formula as is outlined in my revenue sharing proposals.

It has been suggested that a value added tax, which in effect is a national sales tax, should be used either as a method of increasing Federal tax revenues or as a method of reducing or eliminating the property tax or both. I disagree. In the first case, we should increase individual and corporation taxation, as indicated, rather than resort to the national sales tax. In the second case, a shift to the value added tax would represent a retreat from the far sounder revenue sharing approach. In addition, while the Federal government should assume a greater share of the cost of education, certain local services are associated with the ownership of property, and there is thus a justification for some property taxation. Also, as mentioned above, the property tax can be cut by a shift to more progressive forms of taxation by the states.

In any case, the value added tax or national sales tax is against the interest of middle and low income people. It is a regressive tax on consumption, which cannot, of course, be reduced beyond a certain point necessary to insure a decent life. And it represents a backdoor method of increasing individual taxes just after a reduction in taxation on individual incomes has been enacted.

Conclusion

The Federal tax system is basically sound, although it has been riddled with special privileges for the rich. We should move now to establish a fair tax system for all Americans.

The reforms of the Federal tax system relating to individual and corporation income taxes and to estate and gift taxes would result in additional revenues of about $18 billion this fiscal year and $28 billion in fiscal 1973. This amounts to an additional $140 in Federal income for every man, woman and child in the United States. Depending on how these additional revenues were applied they could bring about the reduction or elimination of the local property tax for education; spent on other urgent national needs such as rebuilding our cities, pollution control, adequate nutrition for all; or could go a long way toward financing the Minimum Income Grant program, discussed below.

REDISTRIBUTION OF INCOME

The need for redistribution

The present tax system contains inequities because it does not levy a correspondingly fair burden on all taxpayers. While the rich benefit from the tax system, middle income groups and low income groups including the poor do not receive such benefits. Those with medium incomes find they are paying their taxes but not receiving either the kind of tax breaks given to the wealthy or the kind of public assistance payments made to the poor. The poor find that, as soon as they go to work, they are subject to extremely high rates of income taxation because of their sudden sharp reduction of public aid when they earn their first dollar. The net result is mounting frustration for those in the middle and a future of poverty for those who are heavily penalized when they seek to work their way out of welfare dependence.

There are other weaknesses of the public assistance or welfare program. Many people in need are not covered; family groups are penalized; benefits are insufficient; migration from one state to another is encouraged; extensive controls are applied; and it is possible for taxpayers to be worse off than those receiving public assistance.

A number of welfare proposals are now pending before the Congress. I sponsored the proposals of the National Welfare Rights Organization in an effort to insure that benefits will take into account real needs. Naturally these proposals deal only with those on public assistance—not medium income taxpayers. Some of them represent major improvements in the present system. But none of them offers the broad application of the Minimum Income Grant described below. Even the negative income tax proposal has the defect of creating or, more properly, maintaining a two-class society—those who pay and those who receive.

The minimum income grant

I propose that every man, woman and child receive from the Federal government an annual payment. This payment would not vary in accordance with the wealth of the recipient. For those on public assistance, this income grant would replace the welfare system. It has also been suggested that the national income grant could replace certain social security benefits.

There are a number of methods by which this proposal could be implemented. Some are discussed here. These methods require full examination by the best economic talent available, and the plan chosen must have the support of the President, if it is to have any chance of adoption, for those reasons, the present proposal is not designed for immediate legislative action. Instead, it represents a pledge that, if elected, I would prepare a detailed plan and submit it to the Congress.

One proposal calls for the same payment to be made to all Americans. This is the credit income tax idea, proposed by Professor Earl Rolph, and more recently associated with the name of Professor James Tobin of Yale, immediate past President of the American Economic Association, former member of the Council of Economic Advisors and a member of the National Economic Advisory Group of the McGovern Campaign. Using a 1966 base, Professor Tobin suggests a payment of $750 per person. At the present time, a payment of almost $1,000 per person would be required. This would amount to $4,000 for a family of four—just about the official poverty level boundary.

Another formula has been suggested by Leonard Greene, President of the Safelight Instrument Corporation of New York. Under his "Fair Share" plan, each adult would receive $900 a year and each child would receive $400. This would amout to $2,600 for a family of four.

It should be stressed that neither of these proposals relates to the size of the family unit; the payments are made on an individual basis. Thus, there would be no incentive for a family to break up in order to receive higher total benefits.

A third formula would involve payments according to the family group. Joseph Pech-

man of the Brookings Institution has shown that: "The relative incomes that would provide roughly equivalent standards of living appear to be in the ratio of 75:100:25 for single, married, and dependent persons, respectively." The payment of the Minimum Income Grant could be made according to such a formula. In this case, adequate account would be taken of those who receive welfare and who live alone.

Financing the minimum income grant

As redistribution of income, the Minimum Income Grant would represent no additional cost to the Treasury. Funds to finance the grant would be expected to come from those above a designated break-even income and would take the form of additional taxes. If the break-even income for a family of four were set at $12,000, about 20 percent of Federal taxpayers would experience a tax increase, while about 80 percent would be able to keep all or part of the grant. It is expected that those below the poverty line would keep all of the Grant, while those between the poverty line and the break-even point would keep a gradually decreasing amount as their incomes rose. The loss of Grant benefits would thus be sufficiently gradual as not to discourage those on welfare from seeking a job (in fact, it would encourage them to seek work) and would provide a significant income supplement to the millions of Americans in the medium income range. Thus, for example, a family of four with its own income of $8,000 would be able to retain an additional $2,000 of the Minimum Income Grant.

Professor Tobin's explanation of the credit income tax suggests that the grant would be tax-free but that each person would be required to pay a uniform income tax to the Federal Treasury (a 33.3 percent tax is suggested with the $750 payment). Although this might seem to be a regressive tax, the tax credit resulting from the Grant would cause it to have a progressive effect. While taxes would be much higher for the wealthy, others would receive significant tax relief. Professor Tobin uses the example of a family of four with an income of less than $9,000 that would pay no taxes at all.

This credit income tax proposal would imply a redistribution of income of some $14.1 billion for those above the poverty line to those below it. The redistribution from those above the break-even income line to those below it but still above the poverty line would amount to $29 billion. These figures demonstrate that while the Minimum Income Grant would represent a total reform of the present welfare system, it would actually provide more money to medium income taxpayers than it would to the poor.

Leonard Greene's Fair Share would be financed by the present progressive tax system plus a 20 percent tax surcharge on all taxpayers. The Minimum Income Grant, according to Mr. Greene, would not be tax exempt. This proposal distributes the cost over a greater number of taxpayers but the burden on any one of them is lower than under the credit income tax formula.

It would not be necessary to finance all of the Minimum Income Grant by tax increases. The billions of dollars saved in welfare benefits and the cumbersome administration of the welfare system—a total since it began of $9.6 billion or $1.4 billion in fiscal 1970—could be allocated to the Grant It should be noted that this procedure would represent a major saving for states and localities which would not be required to finance the welfare system and could use the resulting funds—an estimated $5 billion—to lower property taxes. This step would represent additional income assistance to medium income taxpayers. (To the extent that social security payments were replaced by the Grant, social security funds could be used to finance the system.)

In addition, the revenues resulting from the kind of tax reform proposed earlier ($28 billion in fiscal 1973) could be applied to the Grant.

Finally, the justification for the personal exemption on individual tax returns would be removed by the adoption of the Minimum Income Grant. If the person exemption were removed, the Federal Government would receive $63.6 billion in additional tax revenues. These funds could also be applied to the Grant.

THE PROBLEM OF POLLUTION

Mr. FANNIN. Mr. President, our Nation and the world must come to grips with the problem of pollution. There is no disputing this fact.

There is a major disagreement, however, over just how to go about providing environmental protection.

There is strong pressure for a crash program which calls for drastic means to cut pollution. Such a crash program would not take into account economic or social costs and casualties.

I do not believe that the majority of Americans want such a program, especially when they are aware of the high cost and the likelihood of economic disaster.

What we need is a steady, reasonable approach to environmental protection. It is my belief that we can have a healthy economy and a healthy people—it is not a case of having one or the other.

Our laws and regulations must give industries the opportunity to continue providing jobs, and the opportunity to expand as long as they are making good faith efforts to minimize pollution.

Mr. President, recently a number of articles and editorials have been published which I believe provide worthwhile analyses of our problem of controlling pollution. I ask unanimous consent to have these interesting and informative articles printed in the RECORD.

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

[From the Arizona Republic, Mar. 19, 1972]

LET'S SAVE THE MINERS AND THEIR JOBS

A month ago Governor Williams told The Arizona Republic he would not sit still as governor and see the copper smelter at Douglas closed because of Arizona's high anti-pollution standards.

We agree with the governor. This state cannot afford to lose several thousand jobs and over a million dollars in taxes because its air standards are higher than its neighbors' or the nation as a whole.

Phelps-Dodge, which operates three smelters in Arizona, has said it will close the Douglas smelter—which alone supports 1,730 jobs—if the state will not compromise on anti-pollution rules which are substantially higher than federal requirements.

The copper corporation already has announced a new $100 million smelter will be built just outside Arizona in New Mexico, in part because of Arizona's higher anti-pollution barriers, thus costing us more employment and tax dollars.

Certainly the copper industry is in part responsible for our air pollution problem. But an even greater responsibility must be borne by our growing swarm of motor vehicles spewing out almost uncontrolled poisons.

If the automobile needs extra time to end its pollution, certainly one of Arizona's top employers and taxpayers, the copper industry, should receive as much or perhaps more consideration.

We suggest Governor Williams find compromises which will force all copper plants in the state to reach at least federal limits of air control and at the same time push for much-needed barriers to vehicular pollution of the atmosphere.

We need controls. But people are not dying in the streets today from the effects of smelter emissions as some environmentalists would have us believe. Dr. George Spikes, chief of staff of the Cochise County hospital almost in the shadow of the Douglas smelter, testified recently he had practiced medicine there for 13 years and never treated a patient with a condition aggravated by smelter smoke.

This does not mean the smoke from either smelters or automobiles is not harmful. What it does mean is that a longer time plan could be granted if required without harming the healh of Arizona's people.

Arizonans are entitled to clean air. They must have it. But, as President Nixon warned last August in a White House statement, "It is simplistic to seek ecological perfection at the cost of bankruptcy the very enterprises which must pay for the social advances the nation seeks."

[From the Arizona Republic, Mar. 30, 1972]

WHO ARE THE POLLUTERS?

If an automobile really stinks up the air as the antipollution buffs say, who is the guilty party? The guy who builds it? Or the guy who drives it?

To hear some of the environmentalists talk, you'd think a devilish clique called the auto industry deliberately went out of its way to design and build a polluting machine which it then put into the hands of the innocent—and presumably ignorant—public for the nefarious purpose of fouling up the atmosphere.

What the auto industry did, of course, was provide the public with a mighty convenient means of getting around. So convenient did it prove, in fact, that the public—barring a handful of rugged individualists—became pretty well dependent on it for its comings and goings.

Then, long after the nation had gotten addicted to powered wheels, someone started to yell that all those tailpipes were puffing out gases—products of combustion of gasoline—which could become a significant fraction of the earth's atmosphere.

So, at that point, did people throw up their hands in horror, start taking the pledge they'd never, never use those "nasty" automobiles again?

Absolutely not. Most of them kept right on buying and using them to go to work, to the grocery, the club or the movies, to go on business trips, to take the family on holiday, to go house hunting, to go bowling, golfing, swimming, fishing or to the ball game, to lunch, to dinner, to a party, to take a drive in the country or to do any of the 1,001 other things people use their cars for.

What, then, are the rights and wrongs of the situation?

Is it reasonable for people to insist they can't get along without their wheels, yet at the same time claim that somehow someone did them wrong by supplying them with wheels that pollute?

Not really.

Or can they reasonably demand they be able to keep on driving just as conveniently as before yet, presto, with no more pollution?

Hardly. Unless they're smart enough to figure out how.

Sure, nobody wants tailpipe smog. But let's be sensible about getting rid of it. If we can't figure out how, let's give those who can a chance to do it—at reasonable cost.

And let's stop pointing the finger at the other guy for something we're at least as guilty of as he is.

[From the Arizona Republic, Mar. 16, 1972]

REALISTIC ANTI-SMOG STANDARDS

Phelps Dodge, a giant in the mining business, has announced it will build a $100 million copper smelter in southwestern New Mexico. The new smelter will be used for concentrates from a PD mine at Tyrone, N.M. Those concentrates are now shipped to Morenci, Ariz.

The Morenci smelter will be used for concentrates from the Metcalf copper mine in Arizona on which Phelps Dodge expects to spend another $100 million in development costs. While it's good to know that the Morenci smelter will stay open, it would be even better for Arizona if PD had decided to put its new smelter near Morenci instead of going to New Mexico for a site.

A grimmer future is faced by a PD smelter in the Bisbee-Douglas area. As the two PD mines there are mined out, the company hopes to rent the smelter to new mines projected for the Tucson area. As of right now, the chances are that the smelter will go the way of two mines. Bisbee and Douglas may join Jerome on the depressing list of Arizona ghost towns.

There is a lesson here for those who are hell-bent on pushing state smog laws. The copper smelters usually are blamed—although they were here before the autos—for air pollution, and the public frequently is urged to support measures that will drive the mines out of business if they are ever applied.

In December the state board of health held hearings regarding a request to bring Arizona anti-smog laws into conformity with the lower national standards. The request was refused. You would have to be pretty naive to believe this action had nothing to do with the Phelps Dodge decision to erect its new smelter in neighboring New Mexico.

While we are completely in accord with current programs to reduce air pollution—and other sorts of pollution as well—we don't believe there is anything magic about the target dates that have been set.

Whether 90 per cent of sulfur dioxide is removed from smelter smoke by 1975 or by 1976 doesn't seem as important as keeping the mines open and the smelters working.

We also think the emission standards promulgated by the federal government are stringent enough for Arizona. If we keep step with the rest of the nation, we'll be doing all that can be expected

In a free economy businesses are free to pursue opportunities as they present themselves. For the most part Arizona can hold up its end in a contest with any other state. But we will all regret it if we drive away industries through an overzealous determination to set standards that are completely unrealistic.

[From the Arizona Republic, Apr. 2, 1972]

WILL ENVIRONMENTALISTS DESTROY ARIZONA'S ECONOMY?

It is becoming increasingly evident that the environmentalists, carried away by sheer emotion, are proposing anti-pollution measures that the economy of Arizona simply cannot afford.

God Almighty, in His infinite wisdom, could not comply with the demands of the far-out environmentalists to clean up the state's air, water, and earth in from two to four years.

There is no machinery available anywhere that will allow the utility companies to provide the electricity that the people demand and need while they are also eliminating all pollution from the exhaust stacks of generator plants.

For several weeks the mining companies have been asking for additional time to meet the antipollution standards. While they have agreed to meet the federal requirements, which are somewhat more reasonable than the state requirements, there has not been the slightest inclination on any level to help the mines survive by spreading out their costs over a number of years.

Sometimes one solution of a pollution problem results in an even bigger problem. For instance, when the sulfur is taken out of the smoke from the smelters, the mines will have more sulfuric acid than they can possibly dispose of. But they are told to solve the problems all at once, regardless of cost, and not to lay off any workers in the process.

There are no incidents of sickness from pollution in the mining towns. People are not falling over from inhaling the smelter fumes. There is pollution in the cities where thousands of high powered autos carry one man to work and back home again every day. Obviously every driver cannot be arrested, so the authorities turn on the mines. The real solution is for the people to demand a pollution-free gasoline, which the oil companies have the know-how to produce.

Last week the heads of Arizona's three major power companies called a press conference in Phoenix to indicate the extent of their own problems in meeting anti-pollution deadlines. While deliberately pitching their remarks in low key, the presidents of Arizona Public Service, the Salt River Project and the Tucson Gas and Electric Company conceded the possibility that Arizona will be faced with power shortages this summer.

The extent of the ecological demands made on the power companies is best illustrated by the scrubbers Arizona Public Service has installed in its Four Corners plants to meet the state's pure air requirements. Because the devices are new, mechanical malfunctions have kept the generators out of operation for substantial periods of time.

The spokesmen for the utilities refused to speculate on what steps they will take if a power shortage develops this summer. But the average citizen will pay a big price if brownouts or blackouts force factories to close down. They will throw people out of work and reduce payrolls.

If there isn't enough electricity for street lights, crime will increase and the city streets will be even more unsafe after dark.

Power shortages will close down air conditioning in countless Arizona homes, subjecting residents in the desert areas to the intolerable heat of July and August.

These things don't have to happen. Air pollution has been building for years. It's foolish, yes impossible, to try to return the air to its pristine purity in a year, or two, or three. But great strides are being made, and the job will be done without undue hardship if the environmentalists don't push us all into bankruptcy.

It is past time that common sense took possession of legislators and state officials who, by their capitulation to excessive demands that Arizona mines and utilities far surpass reasonable federal clean-air standards, are threatening the state's economic future. Thousands of families that can little afford job losses that mine closures will produce and economic losses to small businesses from power shortages, will be the primary victims of their short-sightedness.

The mines and utilities have shown by word and deed that they can adequately satisfy federal standards. And insolent demands from those who lack the pragmatic capacity to foresee the disastrous economic consequences of forcing industry to do the impossible must be strongly resisted.

[From the Newsletter of the Colorado Plateau, February 1972]

ENVIRONMENTAL ADVISORY COUNCIL: HOPI TRIBAL CHAIRMAN DEFENDS COAL MINING ON RESERVATION

The following is a statement about the controversial mining of coal from the Black Mesa area of the Hopi Indian Reservation in Arizona, by Clarence Hamilton, Chairman of the Hopi Tribal Council:

Let me preface my statement by saying that I do not pretend to represent every single Hopi Indian, just as Governor Jack Williams does not always express the opinion of all Arizonans. But he is the elected Governor of Arizona and as such represents the state in many of the things that he says. In that same sense, I represent the people of the Hopi Tribe as Chairman of the Tribal Council. And I do speak for the Tribal Council itself.

Many of the local, regional and national news media have devoted considerable time and space to the views of some of our tribal members to the effect that they are not in favor of the mining of coal from our tribal lands. It is right that every minority be heard and that their views receive good exposure.

Unfortunately, however, these views often are given broad coverage while the less exciting views of the "establishment" (if I may call myself that) are not given equal coverage. In addition, there are some well meaning national columnists who give their opinion, I am certain, thinking that they are doing the Indians a favor.

Let me give you a couple of examples.

During the fall of last year, one of the well known editorial cartoonists did a cartoon that was widely printed. The picture showed two large tractors tearing up land and knocking down a sign which read, "Private Indian land." In the background, the picture showed giant power plants with smoke puffing out. The tractors each had a sign on them which said, "Plowbody Strip Mining, Inc.". The caption on the cartoon showed one of the tractor operators talking to the other saying, "Amazing what you can still buy with a handful of glass beads."

The implication is clear that the Navajo and Hopi Indians are a bunch of uneducated savages who have sold their "Manhattan Island" of coal for $24 worth of beads. Frankly, we resent that implication.

Another example: In September of last year, a major Los Angeles television station became concerned about what they called "an environmental disaster". This news organization sent a reporter and camera team to spend two weeks in the Four Corners area to film a five-part report on this subject. It is interesting to note that not once during the study did they get a statement from me or any of the elected officials of the Hopi Tribe, nor when they were making their five-part report did they make it clear that the Tribal Council and the United States Department of the Interior had studied this proposal for many months—even for several years—and had entered into a contract with the operators of the mine and that the Tribal Council had repeatedly, in subsequent years, confirmed their position on the value of the contract.

In this TV series, they did, however, quote liberally from one radical activist who claimed to speak for the Hopi and for the Navajo. They quoted a few other Hopi people who give their views, but not one elected official of the Tribe. In short, they spent five television shows making it appear that the coal mining operations on the Hopi and Navajo Reservations are completely bad and with no redeeming facts about them. This is just not true!

Another quick example: I am not in favor of just leaving the coal in the ground where it is of no value to anyone. This brings out another important point. Before I get into this subject, however, let me make certain that no one misunderstands my position. I am definitely in favor of protecting all aspects of the environment and particularly the environment of our Hopi lands. I am also very much in favor of conserving our natural resources and utilizing them wisely.

This very moment, on the other side of Phoenix there is a meeting of the Colorado Plateau Environmental Advisory Council. The goal of this organization to preserve the environment of the Colorado Plateau is an excellent one. And many fine and dedicated people are involved in this program. However, the November issue of their newsletter carried on its first two pages what was called a "Statement of Hopi Religious Leaders". This statement says in part, "The Great Spirit has told the Hopi leaders that the great wealth and resources beneath the lands at Black Mesa must not be disturbed or taken out until after purification when mankind will know how to live in harmony among themselves and with nature."

This statement was said to be signed by seven people who claim that they are Hopi Religious leaders. The route that must be followed to become a Hopi Religious leader is a very formal and specific one. It is not sufficient just to decide that you are a Hopi Religious leader. And these people just do not represent the mainstream of Hopi Religious thought.

As a matter of fact, our Elders have told us that the Creator has placed valuable resources for us in the ground and that it is our obligation to discover the resources and use them for the benefit of man. And this is exactly what we are doing. Yet we realize the importance of assuring that our lands are not destroyed in the process.

From as early as 1960 to 1966, the Hopi people and our attorneys and the United States Government who are the trustees of our land, studied this situation very carefully. We negotiated prices to be paid. We obtained agreement on the restoration of the Black Mesa land to its original characteristics. The Peabody Coal Company has started some test plots, but so far Mother Nature has refused to cooperate. Their seeding along the roadcuts were made successfully but the Navajo sheepherder also refused to cooperate.

Just recently the Arizona Forest Service and the Bureau of Indian Affairs spent $3,000,000 reseeding the area that was destroyed by fire near White River. Land can be improved and the Peabody Coal Company is bound by our contract to restore the reservation land. Of the 40,000 acres leased to Peabody, only about eight or ten thousand acres will be mined. Actually this land has very little grass on it right now due to overgrazing.

The land restoration is, of course, not our only concern. We are concerned about the possible depletion of our valuable water resources. We have taken extensive precautions to make sure the water table is not adversely affected by the mining of coal. More than $160,000 has been spent by the Indian Tribes involved, the Peabody Coal Company, and the U.S. Geological Survey, to install water level monitoring devices. If the water would drop below a certain level, Peabody would have to find other water sources. Peabody draws its water from the deeper wells, far deeper than the local wells go.

We are also concerned about the potential of serious, long-range pollution of the atmosphere. The pollution of the air is a problem which is not now serious in the Black Mesa area. After living on the reservation continuously and working with the operators of the power plants, we have seen their willingness to go to almost any expense to make certain that the power plant emissions do not harm the atmosphere of this four-corner area. All things considered, we are glad they are there.

In a real sense, we consider ourselves fortunate to have these power plants developed in the area around our reservation. Income from the sale to these plants can be of great benefit in improving the economy of my people. Without the power plants, we would have no market for the coal and our economy would suffer.

We are not a self-sufficient island set out here in the great southwestern desert. We need cars from Detroit and manufactured goods from Southern California. We must have something to sell them in exchange. While our silver overlay jewelry, our kachina and our pottery and our scenery are the finest in the world, we cannot hope that we can produce and sell these in sufficient quantities to exchange them for the products that we need from the outside. Like any other community, we need to produce and sell something which the outside world wants to buy. Electric power is one such thing.

A number of years ago we leased some oil rights and made what we thought was a good settlement. This turned out well for us. Now we have made this agreement for the sale of our coal and we are convinced that the moneys that are coming from that agreement give our people the first real hope of developing our industry and people in a way that will allow us to become self-sufficient as we were a thousand years ago. Already many of our people are finding well-paying jobs. We have built a Tribal Administration Center, paid 25 percent toward the new Cultural Center and built a number of homes for our people. We believe that much of our future hope is in the proper development of our young people. Right now there are 160 young Hopi in universities that are being educated by scholarships made available from these funds. With the completion of the Navajo Power Plant at Page, the demands for coal will increase and our income will similarly increase and then we will be able to send more of our young people to the colleges and universities.

The education of our youth is not the only thing we plan to do with our money. We hope to attract industry with jobs for our people just like we did with BVD. That plant cost the Hopi a lot of money from the oil lease sales and in return we will ultimately get back what we spent. We could have left it in the bank to draw interest but that would not have helped the hundreds of families that work there. This is what we plan to do for our people. Again, let me thank you for the opportunity of discussing these ideas with you.

[From the Barron's, Feb. 28, 1972]

ANTI-POLLUTION COSTS: NOBODY SEEMS TO APPRAISE OR FINANCE THEM

(By Shirley Scheibla)

WASHINGTON.—A debate now is raging within the Administration over how to finance the costs of cleaning up pollution, and the outcome may influence the economic health of many major industries for years to come. It is bound to affect their ability to attract investment capital. If a happy solution is not found, some high pollution industries, like copper, simply may move some of their plants abroad.

Anti-pollution equipment won't boost profits since it won't increase production. Thus, it must be paid for out of lower profits, higher prices, federal subsidies or tax incentives and joint ventures, with special exemptions from anti-trust laws. For each alternative, there's an array of arguments, depending largely upon the point of view of the agency involved.

VANTAGE POINT

From its vantage point of looking at the entire business scene, the Council of Economic Advisers (CEA) hoped the difference could be resolved on the basis of solid facts on environmental costs. But the trouble is that the latter are hard to come by. All that can be said with certainty at this point is that the costs will run into many billions of dollars. For one thing, the technology does not yet exist to comply with some of the laws now on the books, several of which are scheduled to go into effect a few years hence to allow time for science to catch up.

In an attempt to get some answers on costs, the CEA turned to an inter-agency task force composed of the Council on Environmental Quality, the Environmental Protection Administration, Office of Science and Technology, the Office of Management and the Budget and the Commerce Department with the National Industrial Pollution Control Council (NIPCC) serving as an advisory group to the Department. NIPCC is made up of leading corporate executives, including the president of General Motors and the chairman of U.S. Steel. This task force decided upon the appropriate areas for scrutiny, and the Council on Environmental Quality then contracted out studies covering 11 industries.

The reports were not ready by the end of November as scheduled. Early in January, William D. Ruckelshaus, EPA Administrator, told Barron's he expected that within 30 days the studies would make some tentative conclusions possible regarding which classes of industry are likely to require subsidy to assure their survival. Likely prospects, according to Mr. Ruckelshaus, include copper, iron and steel, paper and pulp and chemicals.

HAVE TO BE REDONE

However, Walter Hamilton, executive director of NIPCC and also deputy assistant secretary of Commerce, now says that the studies on autos, petroleum and iron and steel will have to be re-done. He told Barron's that while the copper study is completed, "we have not released it because we don't know what to make of it." But he later disclosed that a decision has just been made to release summaries of what has been done in all the studies early in March "with the proper caveats regarding their limitations." They cover baking operations, capital and maintenance costs of auto emission control systems, petroleum refineries, generating stations in electric utilities, cement kilns and klinker coolers in the manufacture of cement, sulfur emissions of non-ferrous metals (separate reports cover copper, aluminum reduction plants, lead and zinc), water problems in leather tanning, iron foundry cupolas, steel, pulp and paper and the canning and freezing of fruits and vegetables.

According to Mr. Hamilton, "No decision has been made on whether the task force will continue the cost studies. I suspect the next round of contracts to be let by EPA in collaboration with other agencies." He pointed out that EPA already has gone to a different contractor for new non-ferrous metals reports which are expected to be completed by the end of March.

Mr. Hamilton put it very bluntly: "Part of our problem is to know what we're doing. No one has been able to develop econometric tables, input-output tables or tell how people will react to various restrictions and requirements."

In copper, Mr. Hamilton said, environmental controls are likely to require an investment of between $300 million and $500 million over the next four or five years. That amounts to 30% or more of the cash flow of domestic producers. "The investment is massive enough for the copper companies to re-examine how to ease pollution. . . . The array of options is very complex, as Dave Swan, the president of Kennecott, has said. For instance, what is done about pollution could change the life expectancy of an ore body."

Mr. Ruckelshaus predicted that higher prices for a product like copper might switch some demand to less polluting products. But where there is no substitute for some applications, he suggested encouraging reuse through freight rates and taxes.

Mr. Hamilton, however, thinks it might be more practical to set tighter standards for other sources of pollution where copper smelters, or other polluting plants, are essential, or to reduce the number of them in a concentrated area. One possibility, for example, would be to restrict vehicular traffic.

LOW RETURN ON STEEL

Messrs. Hamilton and Ruckelshaus agree that the government will have to do something if the steel industry is to stay economically sound. Mr. Hamilton explained that steel's low return on equity means it would take too long to repay the private capital required for environmental costs.

As for petroleum, Mr. Hamilton said: "The question is whether what we gave the contractor encompassed enough of the real world to achieve an acceptable result." On the other hand, he considers the pulp and paper study very good and said it is clear that "a fairly large number of smaller and older mills will have to be phased out. It may be necessary for distressed area assistance (by the federal government) to help the industry make the adjustment. This would be one-shot assistance to ease the transition."

But what if a company must close, say, five out of eight plants? "Then we might have to call in a marriage broker," says Mr. Hamilton.

PARTS OF INDUSTRIES

As for the cost studies cited above, NIPCC Director Hamilton said it is important to realize that they only cover parts of industries. In baking, for instance, they have looked only at the mixing and baking, not at such matters as transportation and the grinding of grain. In autos they didn't consider the costs of safety, changes in transportation requirements and cleaning up manufacturing plants inside, or the increased environmental costs of materials needed to make autos, like steel, plastics and glass.

A monumental problem is that no one can be sure precisely what water pollution standards will be, since the House has not yet acted on S 2770, the bill passed by the Senate. It calls for the "best practicable" control of water pollution by 1976 and cessation of all industrial water, pollution discharges by 1981. In other words, how can industry judge anti-pollution costs when it doesn't know all it will have to do?

In addition, state regulatory commissions impose their own environmental controls, often more rigorous than the federal ones, as for example, in the case of sulfur emission controls by Arizona and Montana.

LAW ON THE BOOKS

Nevertheless, one Administration official scoffed at the idea that the executive branch should not request, and Congress should not enact legislation when the technology does not exist for compliance. Industry, he maintained, has been benefiting for so many years from the free use of natural resources like air and water, that it is not likely to develop the technology without a law on the books.

While some in the Administration hold the view that tax incentives should be used sparingly because they would further complicate tax law which already is too complex, Under Secretary of the Treasury Charls E. Walker told Barron's, "If it can be clearly demonstrated that tax incentives are the best way to meet environmental costs, then we will be willing to go along." He added: "The situation conceivably might require tax credits in some area and subsidies (cash grants) in others. It also might call for other tax disincentives like the one we just called for on sulfur. . . . At this point we have not reached any major conclusions."

Mr. Ruckelshaus said, "I don't have any bias in the direction of tax incentives or direct subsidies, but philosophically I favor tax incentives."

Back in 1969, Congress approved rapid amortization for anti-pollution equipment for plants built before that year. But the authority expires in 1974. According to Joel E. Segall, deputy assistant secretary of the Treasury and director of its Office of Tax Analysis, there has been no decision on whether to ask for an extension. He pointed out, however, that tax incentives work only when there is taxable income, and added that no decision is imminent on tax incentives, "or anything else involving financing of environmental costs."

One Justice Department official suggested that subsidies might be the answer for financing unusually high environmental costs. But that possibility doesn't loom as trouble-free, either. Under the General Agreement on Trades and Tariffs, the U.S. is bound not to subsidize exports, and many products which might qualify for subsidies are exported. Now, however, the member countries are trying to develop criteria for dealing with hardship cases involving environmental costs.

Hendrik S. Houthakker was the CEA member responsible for environmental matters until he resigned last year to return to Harvard. He told Barron's that some industries, particularly the non-ferrous metal smelters, might leave the country.

With all the excitement over pollution, a basic law of physics seems to have been forgotten: matter can neither be created nor destroyed. At this point some of the staunchest bureaucrats are beginning to think it will take the know-how of American business to provide the best ways of handling matter with the least damage to the environment. The problem is how to keep industry economically strong while it comes up with the answers.

CITY OF OMAHA "GET IT TOGETHER" CONFERENCE ON DRUG ABUSE PREVENTION

Mr. HRUSKA. Mr President, all of us have a vital interest in the monumental drug problem we are presently facing throughout the country. Similarly, we can all take pride in the effective work which is being done by the Department of Justice to reverse the upward spiral of this fearsome problem and to come to grips with it in a variety of ways.

It is good for us to take note of the accomplishments of the Federal agencies involved in enforcement of our narcotics laws. When a major breakthrough is achieved—and thanks to the Department's hard work and more effective legislation, we are seeing a gratifying number of breakthroughs—we find it headlined in bold black letters in the press.

We do not too often take proper note of other attacks on the problem which may be less spectacular but no less effective, attacks which continue day after day to make effective inroads into all types of drug abuse.

One such innovative and vital service was brought to my attention last spring when I participated in a community drug abuse prevention organizational program in Omaha. The program was a joint effort of the city of Omaha together with a little-heralded division of the Justice Department's Bureau of Narcotics and Dangerous Drugs, a unit called the community organizational programs branch.

This branch grew out of the increasing pressure for expert guidance in putting together effective community prevention efforts throughout the country. If its experience with respect to Omaha is any criterion, it is doing excellent work.

Since Omaha's problems were typical problems, it was choosen as one of the pilot projects conducted by the branch during 1971. Omaha had a serious drug problem. The citizens and the city officials were concerned but professionally unprepared to meet the crisis. There were dozens of well-intentioned groups trying to do something, but in many cases they were operating independently of one another. In fact they sometimes found themselves in competition with one another.

Today Omaha has a well organized and coordinated community program which is responsive to all aspects of the drug abuse problem. The leaders associated with its program attribute much of their success to the assistance provided by the Bureau of Narcotics and Dangerous Drugs. The excellent work of all concerned is pointed up in a comprehensive report which the city has now released on the seminar last year. Appropriately, it was called "A Get It Together Seminar."

Program specialists under the direction of Mr. Hiram R. Haggett, chief of the community organizational programs branch, provided guidance and assistance to Omaha at every critical level leading to the establishment of a responsive program. This involved assistance with an indepth study of the community drug situation. Following the community evaluation, a special 2-day seminar was provided by the Bureau of Narcotics and Dangerous Drugs for some 300 representatives of community leadership who had a personal or professional commitment to an active prevention effort in Omaha.

This seminar brought together recognized experts in all of the fields of major concern in drug abuse. This Senator had the pleasure of making the keynote address at the opening of the conference. I can personally attest to the enthusiastic response of the audience to the wide range of government resources made available to them by the Bureau.

The assistance went beyond this. And it continues today as the need for technical assistance grows out of an on-going and vital program.

John Ingersoll, Director of the Bureau of Narcotics and Dangerous Drugs, has said repeatedly that prevention is an integral part of enforcement. The Omaha program is one impressive example of the kind of behind-the-scenes effort which forms a base for the more common concept of enforcement. Omaha is a vital city with vital leadership. It is gratifying that when the need for expert technical assistance was recognized by Omaha, that assistance was readily available from the Federal level.

VIETNAM AND AMERICAN POW/MIA'S

Mr. HUMPHREY. Mr. President, we have just finished a week set aside for our expression of concern for American prisoners of war. However noble our expressions of concern, they offer little consolation to the wives and families of those men who have been kept hostages

all the while that American involvement in the war in Vietnam grinds on, and all the while that diplomatic negotiations grind to a halt.

Many of us in Congress urged the President to take a different approach in the hope of ending our involvement rapidly and in obtaining the release of American POW/MIA's, but this fact is hardly any more consoling to any of us. If we are to spend a week of concern for American prisoners, why should it not be a month, several months, any amount of time necessary to secure the safety and quick return of these prisoners? How much is anything we are now doing in Vietnam enhancing their quick return? Just where is our Government's concern?

Mr. President, I had occassion to reply to a most interesting questionnaire submitted by the National League of Families of American Prisoners and Missing in Southeast Asia. The league has done a most commendable job to focus attention on the prisoner issue and how it relates to the entire Vietnam question. It was, therefore, an honor for me to share with them some of my own ideas on the questions of immediate concern to us all. Mr. President, I ask unanimous consent that the questionnaire and the answers which I submitted to the league be printed in the RECORD.

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

1. Would you ask for a negotiated settlement or would you announce a withdrawal of U.S. troops?

2. What steps do you plan to take to secure the release of prisoners and an accounting of the missing of those in Laos and Cambodia?

3. What steps would you take if they do not release the prisoners?

4. Is there any condition in which you could envision the U.S. taking military action, once having withdrawn.

5. What future role do you see the U.S. playing re the Vietnamese government? Supervise elections? Help set up a government? None? To continue aid?

6. Do you favor withdrawal of U.S. weapons from South Vietnam and dismantling of bases?

7. Would you dismantle airbases in Thailand and remove carrier support?

8. What requirements, if any, would you put on the North Vietnam, Viet Cong, Pathet Lao and Khmer Rouge?

9. What is your position on a ceasefire?

10. What other measures would you propose?

11. How would you plan to get the North Vietnamese, Pathet Lao, Viet Cong and Khmer Rouge to permit inspection and abide by the Geneva Conventions since all measures tried for five years or more have failed?

ANSWERS TO QUESTIONS

1. While seeking a negotiated settlement throughout and after the period of our withdrawal, the only items of immediate concern for negotiations which should affect the rapid end to our military operations would be the safety of American troops during their withdrawal and an agreement to obtain the release of American prisoners of war. The United States can continue to have a diplomatic role in the course of negotiations, but this should in no way affect our intent to withdraw.

2. Our troops and vast stores of military equipment still remain in Vietnam. The other side is most interested in seeing our men and equipment removed. Unfortunately, our prisoners have become hostages. I firmly believe they will be released once American involvement in the war is ended. As to the problem of identifying the MIA's in Laos and Cambodia, I think that any prisoner exchange arranged between the United States, South Vietnam, North Vietnam and the NLF must ease the MIA situation. Beginning now and increasing as we reach the prisoner release stage, we should be using additional diplomatic channels to exert pressures on the local insurgents in Cambodia and Laos. What now seems unnegotiable could be turned, if the U.S. quickly withdrew, ending all its military operations in Indochina. We must use our imagination, our influence and our power constructively.

3. I prefer not to answer this question in a public statement because my evaluation of the present situation is based on the assumption that the other side will respond positively and humanely to the steps we take. It should be noted that the other side suffers from constraints not so dissimilar to our own. Pressure from the allies of North Vietnam, the war weariness of its own population and the NLF, the promise of economic assistance all weigh heavily on its own thinking. Military threats have not proven successful as a means of settling our differences in Southeast Asia. A new approach is needed; a diplomatic foray may be more effective than a pointed bayonet.

4. For the same reasons as indicated in question No. 3, I do not think this question can or should be answered publicly at this point, although it would be difficult to envision such action under most conceivable circumstances.

5. I think that the United States has no special obligation to the Government of President Thieu. It is a government, elected by standards which directly violate our declared intentions for our supportive role in South Vietnam. We have supposedly not been fighting to prop up any particular government, but to prove that military aggression is not profitable and to protect the legitimate right of the people of South Vietnam to express their own will. The United States can, of course, offer its assistance in an attempt to achieve a negotiated political settlement which would involve the participation of all political forces in South Vietnam. This assistance must be limited from now on to negotiations and not to military operations.

6. Yes. In fact, I have introduced a bill in the Senate called the War Surplus bill (S. 2985) which sets up machinery to return our excess military equipment for use here at home.

7. When all military operations in Indochina are terminated, I would then reevaluate the use of our basis in Southeast Asia and in other parts of the world, and phase out those which were of no military or strategic value.

8. This question is not clear, but in terms of prisoners of war and MIA's, I would require that arrangements be worked out in their behalf.

9. I have favored a cease-fire since 1968 and again urged the President on December 21, 1971, to halt the bombings as part of a general or partial cease-fire. I do not, however, think that a general cease-fire throughout Indochina must be a requirement as the President has stated for our complete withdrawal. The North Vietnamese and NLF have shown a willingness to arrange a partial cease-fire with American troops during withdrawal and I think this is a constructive offer.

10. Again, the exact meaning of this question is not clear, but I would suggest that more emphasis can be given than apparently has been thus far to private negotiations to obtain the release of our POW's. In addition, the latest announcement of our government's unilateral suspension of the Paris Peace Talks is particularly regrettable. We may be on the verge of some solid negotiations, and I do not want the United States to dampen the chances for progress. Certainly the other side has used the talks for propaganda purposes, but our cutting off the talks will not shut the propaganda machine off. It is better to bear with it in an effort to settle some of the issue which could possibly be negotiated at this time.

11. I would urge an intensification of private diplomatic efforts, as well as those of such international organizations as the Red Cross and International Amnesty. South Vietnam should also accept a parallel inspection of all their prisons. At the same time we should take advantage of Peking's special relationship with Hanoi to communicate our intentions not only as it concerns the welfare of American POW/MIA's, but also as it affects our plans for withdrawal.

PUBLICATIONS BY ALASKA DEPARTMENT OF ECONOMIC DEVELOPMENT

Mr. STEVENS. Mr. President, I ask unanimous consent to have printed in the RECORD a news release from Irene E. Ryan, Commissioner of Economic Development of the State of Alaska. The news release concerns two publications, "Pacific Rim Trade Opportunities" and "The Promise of Power," which I believe are of significant interest to many people throughout the country.

These publications may be ordered from the Industrial Development Division, Alaska Department of Economic Development, Pouch EE, Juneau, Alaska 99801, telephone 907–586–3460.

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

Commissioner Irene E. Ryan announced today the release of two new publications by the Department of Economic Development.

One publication, "Pacific Rim Trade Opportunities," is a summary and analysis of Alaska's real and potential trade. The booklet contains statistical information on Alaska's trade with each of the Pacific Rim Nations. An Alaskan trade directory is also included. Commissioner Ryan stated, "Alaska's international trade is undergoing spectacular growth. This growth will continue as we develop the potential of our immense resources," "Alaska's foreign trade is increasing daily," Commissioner Ryan said, "as foreign nations become more aware that Alaska is the air crossroads of the East and the West. There is the increasing realization that Alaska offers new opportunity for tourist exchange and an air freight service's industry."

The second publication release, "The Promise of Power." "This publication," Commissioner Ryan said, "is a description analysis and review of the potential for Southeast Alaska's water power and mineral resource development. The publication was prepared in cooperation with the Alaska State Yukon-Taiya Commission."

"Copies of the publications may be obtained by request to the Industrial Development Division," Commissioner Ryan concluded.

EQUAL AND FAIR TREATMENT FOR JUDGE ADVOCATES AND LAW SPECIALISTS FOR THE ARMED FORCES

Mr. HRUSKA. Mr. President, I was pleased to join on April 4 in cosponsoring S. 704, a bill which would provide much needed incentives for the retention of military lawyers.

Over the past several years the quality of military justice has steadily improved. A good deal of credit for this progress lies with the efforts of our lawyers in uniform, whose dedication to justice has brought about greater efficiency in trials, outstanding representation of defendants, and more rigorous adherence to law and regulations by military commanders. There has also been an increasing involvement of military lawyers in the administrative processes of the Armed Forces, providing further assurance that individual rights will be properly protected in quasi-judicial proceedings and other personnel actions. And the personal legal services provided to our men in uniform and their families by judge advocates and legal officers has become an indispensable part of the military benefits which motivate individuals toward military careers.

If we are to sustain and improve upon this admirable record, we must not overlook the essential factor of the military lawyer himself. Unfortunately, the retention rates for judge advocates and law specialists in the Armed Forces continue to become dangerously low. It is for this reason that I commend the Senator from Hawaii for introducing S. 704, and join him in urging its swift approval by this body.

S. 704 would provide incentive pay for military lawyers which would increase as the individual is promoted to higher grades. This is not unlike the present situation pertaining to military physicians, dentists, and others who have been receiving various forms of incentive pay for years. In addition, this bill would provide continuation pay for judge advocates who extend on active duty for from 3 to 6 years, at the rate of 2 months pay for each additional year of active duty. This bonus-type payment would be received upon the completion of 4 years active duty.

When he introduced S. 704 a year ago, the Senator from Hawaii presented some alarming statistics indicating quite plainly that something must be done to attract and retain the best young legal talent available. Matters have not improved since then, and the situation grows more desperate as the threat of induction diminishes. The following figures as of September 30, 1971, show the disparity between the authorized and actual strengths of military lawyers throughout the Defense Department at the higher career grades:

	Authorized	Actual
Colonel/Captain	366	339
Lieutenant Colonel/Commander	634	326
Major/Lieutenant Commander	956	512
Captain/Lieutenant	2,016	2,748

Each branch of the military was asked last September to indicate what percentage of its lawyer strength it needed to be filled by career officers, and what percentage was actually being occupied by career officers. The following figures describe most eloquently how deficient the military is becoming in career attorneys, and how much reliance must be placed on those who are only temporarily in the military:

[In percent]

	Needed	Actual, Sept. 1971
Army	47	26
Navy	63	38
Marines	63	22
Air Force	58	41

Mr. President, last July 19 the House of Representatives passed H.R. 4606, the House version of the bill I joined in cosponsoring on April 4. The House passed a similar measure during the last Congress, but the Senate was given no opportunity to express its will on this measure. I am most hopeful that the same situation will not occur again, and urge the Armed Services Committee to take speedy action in reporting this important legislation to the Senate floor for a vote.

HAS THE F–14 BAILOUT NOW BEGUN?

Mr. PROXMIRE. Mr. President, the Navy's failure to pay Grumman Aircraft Corp. $4.1 million in advance production funds due April 1 on the F–14 jet fighter could lead to a backdoor bailout of the company costing taxpayers hundreds of millions of dollars.

I have asked the General Accounting Office to investigate what could be a deliberate attempt by the Navy to undermine the present F–14 contract and to set the stage for another Lockheed-style bailout.

The Navy claims that it is holding Grumman's feet to the fire on the existing contract, but the bankrupt nature of this claim is apparent from two recent actions revealed last week in Navy testimony to the Congress.

First, the Navy is negotiating with Grumman for Government payment of roughly $40 million in above contract costs incurred to date as a result of a 6-month slippage in the delivery schedule for the 86 F–14 aircraft now on order, despite the fact that it is far from clear that the Navy is liable for all these costs.

Second, the Navy deliberately chose not to make a payment of $4.1 million in advance procurement funds clearly due Grumman on April 1 in conjunction with the 48 additional F–14's budgeted for fiscal 1973, an omission which expressly opens the existing contract to later modifications.

I have written today to the General Accounting Office to request an analysis of the propriety and likely consequences of these two Navy actions.

It is my belief that unless corrective steps are taken soon their net effect may be to sabotage the present contract and to make a bailout of the F–14, not a decision for the Congress to weigh, but a simple fait accompli.

FORTY MILLION DOLLARS IN ABOVE-CONTRACT COSTS

The Navy claims that the $40 million in above-contract costs is owed Grumman because the schedule slippage which has occurred is due to the crash of the first F–14 prototype in December 1970.

The Government may be responsible for the $8.7 million loss caused by the loss of the prototype itself, but the costs of the schedule slippage would appear to be Grumman's responsibility.

The Navy's interpretation puts the entire cost burden of a contractor's technical failure squarely on the Government's shoulders.

It also implies Government responsibility for increased costs due to schedule slippage not only on the 86 aircraft purchased to date, but also on the 227 additional F–14's which the Navy hopes to buy.

The end result could be a back-door bailout of hundreds of millions of dollars, especially since the causal relationship between the prototype crash, schedule slippage, and increased costs would be almost impossible to track.

I am, therefore, asking the General Accounting Office for its interpretation of the Government's liability for above-contract costs on planes delivered late by Grumman, and I call upon the Navy to suspend its negotiations and to withhold any payments to Grumman for this purpose until the GAO's interpretation has been made.

In addition, I sincerely question whether such payments to Grumman would be consistent with the ceiling on fiscal 1972 F–14 costs imposed by Congress in the military procurement bill last year.

LONG-LEAD PAYMENT SLIPPED

The Navy's eagerness to hand Grumman up to $40 million in funds it may not owe stands in marked contrast to its refusal to pay the company $4.1 million in long-lead funds which clearly came due last Saturday.

The existing contract expressly provides for the payment of such funds on April 1 and July 15 of each year. It also states that Grumman is entitled to a modification of contract terms if payments are not made and if problems arise as a result.

Two years ago the Navy sought and received congressional approval to reprogram funds from other programs in order to meet these dates and protect the Government's interest.

Last year an admiral flew up to New York on one of the dates in question to hand deliver the required payment.

But this year April 1 has been allowed to pass without any payment being made.

The rationale for the omission was stated by Admiral Zumwalt last week:

> The more money we withhold until we get resolution of the differences of opinion, the more powerful pressure we will bring to bear to protect the government interest.

In light of the specific contract terms, in light of past Navy efforts to make these payments on the dates required, and in light of the $40 million it is trying to give Grumman at this time, this rationale has a hollow ring indeed.

The Navy's payment omission would appear to be part of a conscious attempt to turn the existing F–14 contract into an increasingly hollow shell. I call upon the Navy to show any real interest it may have in protecting the Government's interest by making the omitted payment

as soon as it possibly can, in order to reduce any relief to which Grumman may be entitled due to its omission.

Duplicity, it would seem, has become a way of life in Navy management of this program. It cannot be tolerated much longer by a Congress sworn to uphold the public trust.

Mr. President, I ask unanimous consent to have printed in the RECORD, letters I have sent today to Comptroller General of the United States, Elmer B. Staats, and Navy Secretary John Chafee on this matter.

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

WASHINGTON, D.C.,
April 7, 1972.

HON. ELMER B. STAATS,
Comptroller General of the U.S., General Accounting Office, Washington, D.C.

DEAR ELMER: For more than a year now it has been clear that serious cost problems have been developing in the Navy's F–14 jet fighter program. The Navy has sought to dispel Congressional concern about the seriousness of these problems by arguing that existing contracts adequately protect the Government's interest and that these valid contracts will be enforced. I sincerely question, in light of several Navy actions taken during the past year, whether the Navy has lived up to this pledge. My purpose in writing is to request a brief GAO investigation as to the propriety and likely consequences of three Navy contract management actions concerning the F–14 program.

1) Above contract costs due to the crash of the first F–14 prototype and subsequent schedule slippage in aircraft deliveries. In testimony last week to the Tactical Air Power Subcommittee of Senate Armed Services, Navy witnesses stated that they were negotiating with Grumman Aircraft Corporation for government payment of roughly $40 million in above contract costs incurred as the result of a six month slippage in the delivery schedule for the production aircraft now on order. Navy witnesses stated that the Government was responsible for these costs because they stemmed from the crash of the first F–14 prototype in December, 1970, and because the Government is obligated under the Armed Services Procurement Regulations (ASPR) to bear the cost both of the lost plane itself and any subsequent expenses (such as schedule slippage) occasioned by its loss. This Navy position gives rise to several specific questions in my mind:

a) Is the Navy correct in suggesting that the Government is responsible, under the F–14 contract or the ASPR, for the $8.7 million loss identified in Navy testimony as directly attributable to the crash itself? Does this responsibility exist regardless of the cause of the crash?

b) Is the Government responsible also for the cost impact of any schedule slippage occasioned by the crash? If so, what legal principle is used to define the extent of government responsibility? Has this principle been applied properly by the Navy in its negotiations to date with Grumman?

c) If the Government is responsible for the cost impact of any schedule slippage occasioned by the crash with respect to the aircraft ordered by the Navy to date, will it be responsible also for the cost impact of late delivery of all subsequent F–14 purchases as well? If so, what procedures should be followed by the Navy to ensure that the Government will pay only for cost increases clearly attributable to schedule slippage and only when the schedule slippage itself is the unavoidable result of the crash? Assuming that these procedures are applied, what is the likely extent of the total above contract costs which the Government will have to absorb as a result of the prototype crash?

d) What precedents exist for and against the proposed Navy treatment of this matter, especially with respect to problems which have arisen under other aircraft contracts? Is precedent, in fact, unclear, and is it possible that the extent of government liability, initially on the F–14 program and precedentially on later programs also, might be reduced if the Government litigated the issues presented in this matter instead of following the proposed course of action?

I would appreciate it if you would analyze the propriety and likely consequences of the proposed Navy action with these specific questions in mind. Please feel free in the process to comment on other relevant issues and to deal with the specific points raised in whatever order or format seems most desirable.

2) *Non-payment of long lead funding due Grumman on April 1st.* The F–14 contract specifically provides for Navy payment of long lead funding to Grumman on April 1st and July 15th of each year. It also provides that if a required payment is not made, "delivery schedules and other terms and conditions" of the contract shall "be modified to the extent it can be demonstrated by the Contractor as directly resulting from the failure of the Government to provide such funds . . ." Two years ago the Navy sought and received Congressional approval to reprogram funds from other programs in order to meet these dates and protect the Government's interest. Last year an Admiral flew up to New York on one of the dates in question to hand deliver the required payment. But this year April 1st has been allowed to pass without any payment being made.

Admiral Zumwalt explained the reason for the omission as follows in testimony last week to the Tactical Air Power Subcommittee: "The more money we withhold until we get resolution of the differences of opinion, the more powerful pressure we will bring to bear to protect the Government interest." This action also gives rise to specific questions:

a) How does the ommission of this payment in any way strengthen the Government's position?

b) Is it not true that omission of the payment runs the risk of an otherwise easily avoidable contract dispute between Grumman and the Government?

c) Is it not true, also, that this risk could still be mitigated by prompt payment of the $4.1 million due originally on April 1st?

d) If prompt payment is not made in the near future, what relief might Grumman hope to obtain? Might Grumman not argue in that event that nonpayment of these funds indicated uncertainty as to Navy intentions regarding a possible Lot V purchase, making company preparation for such a purchase impossible, with the ultimate result being government responsibility for all increased costs associated with the resultant delays both in advanced production work on Lot V and in the actual production and delivery of Lot V and subsequent lots as well? Is it not possible that these increased costs could run to many times the $4.1 million due April 1st? Might Grumman not argue, in fact, that nonpayment of these funds so seriously affected company planning regarding remaining lot orders as to make the existing contract unenforceable as to future lots and to justify a general renegotiation of the contract's terms?

e) On balance, would it not have been much more consistent with sound contract management designed to protect the Government's interest for the Navy to have paid Grumman $4.1 million before April 1st?

3) *Termination by the Navy of the Pratt & Whitney engine contract for the F–15 and F–14B.* A year ago a valid contract existed between the Navy, the Air Force, and Pratt & Whitney for the production of engines for the F–15 and the F–14B. This contract was terminated by the Navy for the convenience of the Government in June of last year. As a result, the Air Force has been forced to renegotiate prices for F–15 engines at a cost per engine roughly $350,000 higher than the cost provided for in the contract. The long-term burden to the taxpayers is already estimated at more than $300 million in F–15 engine costs alone. It could rise higher if the F–14B program is resurrected in the future. I find it quite difficult to justify the Navy's termination of the contract for the convenience of the Government. It would appreciate it if you would review this action with the following specific questions in mind:

a) Since the cost growth and schedule slippage problems encountered in the F–14B engine program were the responsibility of Pratt & Whitney rather than the Government, would not the Navy have protected the Government's and the taxpayers' interest far better had it exercised its option for the purchase of 58 production engines when that option came due last September, forcing Pratt & Whitney itself to terminate the contract for default?

b) Instead the Navy terminated the contract for the convenience of the Government on July 23rd. Regardless of the merits of the decision itself, was there any need to make any decision at that early date, since there was no need under the contract either to terminate or to exercise the option until September 1st? Would it not have been better contract management for the Navy to wait until just before September 1st before making any decision?

c) If the Navy itself did not want the 58 engines for which the option came due last September, could it not have bought these engines *for the Air Force*, thereby preventing any termination of the F–15 engine contract and increased F–15 costs?

d) Do you not agree with me that the actual course of action followed represented collusion between the Navy and a contractor to let Pratt & Whitney out of a firm contract?

I would appreciate it if I could have a report on your investigation into these matters no later than one month from today, on Monday, May 8th. The first two matters have a significant impact on the likely long-term cost to the taxpayers of the F–14 program, floor debate on which is likely to resume in the Senate when the Military Procurement Authorization bill is reported out in early May. In addition, I have written to Secretary of the Navy Chafee, urging him to make payment of the $4.1 million due Grumman on April 1st as soon as possible and to withhold payment of the $40 million in above contract costs until your investigation of its propriety is concluded. An early report on these two matters might aid the Navy in deciding whether to follow these requests. Since the two matters involve questions of contract interpretation more than detailed factual investigations, it should not be difficult to complete your analysis of them before the suggested date. In the event that an investigation of the engine contract issue might be more time consuming, I would be willing to accept a separate report on it at a slightly later date. To further reduce time pressures, it would be acceptable to me to receive your report in the form of a personal letter rather than a published document. I also see no need to obtain formal comments on the report in advance of its submission from any interested parties; I trust that you will be in contact with all parties involved in gathering information for the report and that this contact will provide ample opportunity for all of them to express their views.

Thank you very much for your assistance on these requests. If you have any questions with respect to them, please feel free to contact me at any time. Mr. Ross Hamachek of

the Joint Economic Committee staff will also be available to assist your staff in any way he can.

Sincerely,

WILLIAM PROXMIRE,
Chairman.

WASHINGTON, D.C.,
April 7, 1972.

Hon. JOHN CHAFEE,
Secretary of the Navy,
The Pentagon,
Washington, D.C.

DEAR JOHN: I am deeply troubled by two recent actions taken by the Navy in its management of the F–14 program. According to Navy testimony to the Senate Armed Services Committee, the Navy (1) did not pay Grumman the $4.1 million in long lead funding for Lot V which came due April 1st, and (2) is negotiating with Grumman for the payment of roughly $40 million in above contract costs on aircraft now on order which have been incurred as a result of the crash of the first F–14 prototype in December, 1970, and subsequent schedule slippage.

My own feelings about these two actions are set forth in the enclosed press release dated today, April 7th. As noted in that release I have called upon the General Accounting Office to investigate the propriety and likely consequences of these two Navy actions. A copy of my letter to the Comptroller General is also enclosed. (I have also asked the GAO to examine the circumstances surrounding termination last summer of the F–15 and F–14B engine contracts with Pratt & Whitney.)

I deeply fear that the consequences of the two Navy actions announced last week will run counter to the Navy's professed purpose of holding Grumman's feet to the fire on the F–14 airframe contract. Accordingly, I call on you at this time to withhold payment of the $40 million in above contract costs due to the prototype crash until the GAO has evaluated the government's responsibility for these costs. In addition, I urge you to pay Grumman immediately the much smaller amount of $4.1 million in long lead-time funding which came due on the contract April 1st.

Your careful consideration of the merits of my requests will be appreciated.

Sincerely,

WILLIAM PROXMIRE,
Chairman.

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. YOUNG. Mr. President, we are all aware of the need to provide a safe and clean working environment for the workers of this country. Our dedication to this effort has been seen time and time again at both the State and Federal level with the enactment of legislation aimed at improving working conditions for workers in every industry.

The Occupational Safety and Health Act of 1970 was a far-reaching piece of legislation that extends its application to virtually every retail, service, manufacturing, and farm business in the country that employs nonfamily help.

There is much in this act that provides needed assurance that the American workmen and women will have safe, healthful working conditions. At the same time, it has given a Government agency the power to literally put these people out of business without any notice and without any particular proof that their establishments are unsafe to their employees.

As the distinguished Senator from Nebraska (Mr. CURTIS) stated in his remarks when he introduced S. 3262, which is designed to correct problems created by this program, the so-called national consensus standards designated by this act have been put into effect without following the normal and necessary administrative procedure.

These are standards that have been adopted by a number of private organizations as guidelines or recommendations and, as such, could serve a useful purpose. To make them literally the law of the land means that businessmen from the operator of the corner grocery to the giant chain stores and from the local machine shop to United States Steel will be treated alike in the requirement to meet these standards.

One of the greatest weaknesses of the act is the authority it gives for the adoption of these "national consensus standards" as temporary standards without any requirement that those affected by them even be notified of their existence. In other words, a North Dakota farm operator today could be told to halt his operations or that portion of it involving the one or two seasonal employees he may have because he was in violation of a standard he did not even know existed.

To make matters worse, these so-called "national consensus standards" are only temporary. Permanent standards are to be adopted as soon as possible. The permanent standards could well be vastly different. This means that costly changes already made to meet the temporary standards would be disallowed and further changes required.

I have, in recent weeks, received a great many requests for information on this law and many letters detailing the problems it presents small businessmen and farmers. The publisher of a rural weekly newspaper recognizes the need for safe working conditions, but points out that meeting the requirements of the act could cost him $100,000 which is more than his business can afford. He adds, that in 23 years of operations, there have only been two minor claims for workman's compensation in his plant. This could hardly be described as a hazardous or unsafe operation.

One of the leading contractors in my State raises questions concerning the requirements for the testing of materials. He points out that there are no testing facilities available in our region at the present time and, therefore, no way the requirement can be met. He adds, and I agree, that—

> They are going out with clubs to enforce the regulations when what they really should do is to take us all by the hand and give us direction.

It would seem that this would be the only way in which any degree of compliance can be obtained.

A farm implement dealer in western North Dakota writes that in the 26 years he has been in business he has never had an accident in his shop. This has been accomplished by using good tools and equipment and personally supervising the operations. Nonetheless, he doubts that it will be possible to meet the requirements under this law. Scratch one rural small business.

A farm couple who has made a pretty thorough study of the regulations indicates that some of the devices recommended are not even available for purchase at the present time. Despite this they and their neighbors are subject to the penalties imposed under the act if an inspector should drop in on them.

A widow operating a corner grocery store points out that she has only very limited space for display and stocking of her business and no way to expand it. She does not feel that she will be in business any longer if the act is not amended.

This is but a small sampling of the comments I have received. It does, however, reflect the tremendous impact this act is having on small businessmen and agriculture all across North Dakota and the Nation.

The bill, S. 3262, introduced by Senator CURTIS and other Senators offers a reasonable and workable alternative. I know that there are those who say that no exemptions should be granted. But I point out that in the case of the small business and farm operations that would be included in such an exemption, the owners of the firm are working right alongside the employees. They are on the scene to observe the need for improvements in working conditions and to see that they are made. It is their health and well-being that are directly involved in such cases, and I feel very strongly that they are in a better position to judge both the need for the effectiveness of a safety measure than a Government inspector armed with a set of regulations that apply uniformly to businesses all across the Nation.

Mr. President, I commend Senator CURTIS for the leadership he has exercised in introducing a bill to correct this grave problem. I am hopeful that the bill will receive prompt and favorable action. This is needed to prevent irreparable damage to agriculture and small business throughout the Nation.

There is an urgent need for approval of this legislation by Congress in order to make it possible for small businessmen and farmers across the country to live with this program. This legislation must have top priority with Congress. Action is needed now to prevent untold damage to the small businesses and farms that are the backbone of our Nation's economy.

PROTECTING DIPLOMATS

Mr. HRUSKA. Mr. President, last August 5 I introduced a bill, S. 2436, at the request of the Departments of State and Justice, to provide expanded protection of public and foreign officials under title 18, United States Code.

In brief, the bill would enable Federal authorities to move against persons who utter express or implied threats to commit acts of physical violence or who commit assaults or murder against members of the diplomatic corps, other foreign officials, and officials of the United States. In the past the Government has had to rely on local authorities for redress of instances of this type with no guarantee that sufficient resources were available to discharge the responsibility ap-

propriately. This has proved particularly embarrassing in view of our international obligations as a host nation.

Changes in Federal kidnaping law are also contained in this bill. These include the reinstitution of the death penalty for cases where the victim dies as a consequence of the crime. This provision is aimed at correcting the defect in the law struck down by the Supreme Court in *United States* v. *Jackson,* 390 U.S. 570 (1968). Federal jurisdiction in kidnaping cases would also be extended to cases arising within the special maritime and aircraft jurisdiction of the United States. This provision is aimed at insuring adequate punishment and extradition of hijackers.

Recurring incidents regarding diplomatic personnel point up the need for legislation of this type. A week ago, following an incident in which blood was poured on a Soviet diplomat, the New York Times indicated that action on legislation such as this is imperative. I urge the Senate to heed this call for action. I ask unanimous consent that the Times editorial be printed in the RECORD.

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

PROTECTING DIPLOMATS

On the morning after a Soviet diplomat was showered with blood by a young Jewish Defense League militant at a Washington reception recently, Ambassador George Bush went before a Congressional committee to plead for legislation making it a Federal crime to harass or attack foreign diplomats in this country. Some such action is imperative.

Last October, shots were fired through the window of an apartment at the Soviet Mission where four children were sleeping. Though no one was injured, the incident sparked an angry uproar in the General Assembly and anguish in Washington. Such acts of violence by impassioned and irresponsible citizens sully the reputation of the United States, compromise American diplomacy, impede the work of the U.N. and are totally counterproductive.

The proposed legislation should act both as deterrent and as aid in apprehension. Additional action is needed, however, to extend direct Federal protection to U.N. diplomats; such protection is already provided for foreign missions in Washington. Providing it for delegates to the United Nations is obviously beyond the capacity of New York City's hard-pressed police force; it is a clear and necessary responsibility of the Federal Government.

GENOCIDE: PRESIDENT TRUMAN'S ADDRESS TO THE SENATE

Mr. PROXMIRE. Mr. President, almost 23 years ago President Truman transmitted the United Nation's Genocide Convention to the Senate for advice and consent. In his message, he urged the Senate to act quickly to approve the Convention:

By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world-shocking crime of genocide, we have established before the world our firm and clear policy toward that crime. By giving its advice and consent to my ratification of this convention, which I urge, the Senate of the United States will demonstrate that the United States is prepared to take effective action on its part to contribute to the establishment of principles of law and justice.

Twenty-three years ago, President Truman believed, as I am sure every Senator and, indeed, every American still believes, that the United States is the leader in the world in promoting international peace and justice. With this belief so much a part of our American tradition, why is it then that this Genocide Convention has not been even voted upon?

The primary reason is that the American Bar Association, among other groups, has presented legal and constitutional objections to the treaty. These objections have been shown to be invalid. Every committee of the American Bar Association that has worked directly on the Genocide Convention, has approved of it and the Senate Foreign Relations Committee acted upon it favorably.

For these reasons, I see no justification for further delay. If we are to live up to our beliefs and ideals, we must act immediately to ratify the Genocide Convention.

FAYETTEVILLE STATE ATHLETIC ACHIEVEMENTS

Mr. JORDAN of North Carolina. Mr. President, it has come to my attention that Fayetteville State University, the second oldest publicly supported institution of higher learning in North Carolina, is enjoying one of its most successful athletic years.

The school's most significant achievement was qualification for the annual Central Intercollegiate Athletic Association—CIAA—basketball tournament February 24–26 in Greensboro, N.C. for the first time in 15 years.

The CIAA is composed of 12 member schools in North Carolina and Virginia and the tournament is the largest in the country for black colleges.

To qualify, a team had to finish among the top four in the northern or southern division.

The Fayetteville State Bronchos, with a 16–10 season's record, went all the way to the tournament finals before losing to Norfolk State College.

In addition to that second-place finish, the team's All-American forward, Mike Sneed, was named most valuable player. Coach Thomas L. Reeves was picked as the tournament's outstanding coach, and both Sneed and Earl McNeill were picked on the all-tournament team.

The following week the Bronchos took part in the district No. 29 tournament of the National Association of Intercollegiate Athletics—NAIA—and again went to the finals. Sneed was picked on the all-district team.

The school's football team had its first winning season since 1956 and placed four players—Tackle Sylvester Ritter, End Blenda Gay and Backs Curtis Leak and Frank Bohannon—on the all-district No. 29 team.

The girls' basketball team finished third in the Elizabeth Dowdy Invitational Basketball Tournament and placed one member, Angier Martin, on the all-tournament team.

The Fayetteville State baseball team is presently undefeated in CIAA play.

The record of this fine school for the year is certainly an outstanding one which I am pleased to call to the Senate's attention.

EXTENSION OF U.S. CONTIGUOUS FISHING ZONE TO 200 MILES

Mr. STEVENS. Mr. President, our country's marine resources are a valuable asset which we must conserve and protect if we are to reap their bounty in the future. Many Americans, therefore, have been deeply concerned and anxious about threats to our fisheries from foreign nations which have often ignored international conservation agreements. I believe that through more well-considered international accords and our own Nation's stricter enforcement efforts, we can protect our fishing resources.

I have recently received the results of the poll taken by "The Advocates" television show following its program on the proposal to extend the United States contiguous fishery zone to 200 miles. A decisive majority of the viewers responding by mail to the February 15 debate favored the extension of American fishing jurisdiction; 80.4 percent or 1,823 of the 2,268 replies agreed with the proposal to establish a 200-mile contiguous fishery zone.

Mr. President, these results convince me again that the American public is strongly committed to the protection of American fishermen and the strict enforcement of our international fishing agreements.

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

Mr. President, the other approach for properly protecting our fishing resources is to design and establish more scientific and well-considered international fishing agreements. The "species" concept of fish conservation is one which I believe will accomplish this purpose. I have been advised by the Conference of the National Federation of Fishermen that the "species" concept is the policy that it recommends for adoption by this country in its fishing agreements with foreign nations. The fishing industry is indeed diverse, involving the harvesting of fish in three widely different geographical areas. Consequently, an international treaty provision which may solve the problems of the coastal species sector of the industry may only exacerbate the problem of the high seas species sector. A flexible approach differentiating between the different species of fish, therefore, offers a worthwhile alternative for protection and wise conservation.

Mr. President, I ask unanimous consent that the recommendations adopted at the July 1971 Conference of the National Federation of Fishermen also be printed in the RECORD at the conclusion of my remarks.

I reiterate again that the American public clearly understands the present dangers and threats to our fishing re-

sources. Rigid enforcement of our fishing treaties and carefully drawn international fishing agreements can reverse the present trend toward depletion of our fishing bounty.

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

THE NATION RESPONDS TO THE ADVOCATES—VIEWERS STRONGLY FAVOR FISHING RIGHTS EXTENSION TO 200 MILES OFF U.S. COAST

Should the U.S. Claim Jurisdiction Over Fishing to a Limit of 200 Miles From Its Shores?

An emphatic majority of Advocates viewers responded in favor of a proposal, debated on the Public Broadcasting Service (PBS) February 15, which would extend United States jurisdiction over fishing rights to 200 miles from its shores.

By a ratio of over four-to-one, 80.4 per cent of the 2,268 votes agreed with former Secretary of the Interior Walter J. Hickel that foreign fishing fleets should be kept outside waters up to 200 miles off the U.S. coast. The proposal was also supported by Joseph S. Gaziano, president of the Prelude Lobster Corp., in Westport, Mass., the world's largest lobster fishing company.

Approximately one-fifth of the total vote came from organized group responses in the states of Massachusetts, New Jersey, Oregon, Pennsylvania and New York.

STATE BREAKDOWN OF MAIL RESPONSE

State	Pro	Con	Other
Alabama	6	1	0
Alaska	57	2	1
Arizona	14	5	1
Arkansas	1	3	0
California	225	111	8
Colorado	18	5	0
Connecticut	23	4	0
Delaware	4	1	0
District of Columbia	5	11	0
Florida	65	18	1
Georgia	6	2	0
Hawaii	1	3	1
Idaho	2	0	0
Illinois	31	8	1
Indiana	8	3	0
Iowa	7	1	0
Kansas	4	6	0
Kentucky	0	3	0
Louisiana	13	5	0
Maine	28	1	2
Maryland	8	4	0
Massachusetts	302	20	1
Michigan	16	8	0
Minnesota	17	5	0
Mississippi	5	2	0
Missouri	2	2	0
Montana	2	1	0
Nebraska	6	2	0
Nevada	0	0	0
New Hampshire	10	1	1
New Jersey	215	19	3
New Mexico	13	6	1
New York	177	33	0
North Carolina	19	7	1
North Dakota	0	0	0
Ohio	59	3	0
Oklahoma	12	5	0
Oregon	41	7	4
Pennsylvania	111	18	0
Rhode Island	73	3	0
South Carolina	5	1	0
South Dakota	0	0	0
Tennessee	5	1	1
Texas	25	16	0
Utah	3	0	0
Vermont	6	5	0
Virginia	9	8	0
Washington	98	23	3
West Virginia	2	1	0
Wisconsin	17	6	2
Wyoming	1	0	1
Unknown	42	12	0
Foreign	4	0	0

LAW OF SEA FISHERY POLICY ADOPTED AT NATIONAL FEDERATION OF FISHERMEN CONFERENCE

I. COASTAL SPECIES

Coastal nations shall have the ownership of all the fish and shellfish resources which live on or above, or are dependent upon the Continental Shelf and slope adjacent to the coastal nation and/or the waters above the shelf and slope for reproduction and/or survival during the major part of their life.

When stocks of fish are underharvested by a coastal nation to which they belong, provisions shall be made for harvesting by other nations subject to licensing and control by the coastal nation.

II. ANADROMOUS SPECIES

Anadromous fish shall be the property of the coastal nation of origin. No nation shall harvest anadromous species of fish without express consent and approval of country of origin. Where anadromous fish is habitating and is harvestable in territorial waters of a country other than the country of origin, it shall be mandatory upon the nations involved to work out harvesting rules consistent with conservation with due regard to the rights of each nation to its proper share of the allowable catch.

III. HIGH SEAS SPECIES

All species of fish not included in paragraphs I and II, and in particular, fish of oceanic origin and habitat, shall not be subject to ownership and control by the coastal nation. The conservation and management of such species shall be the responsibility of multinational control to be exercised jointly by the harvesting countries and by countries whose coast borders the distribution of such fish stocks.

MIRV AND THE ARMS RACE

Mr. HUMPHREY. Mr. President, in July of last year I submitted an amendment to the military procurement authorization bill which would have halted the further deployment of MIRV, with the proviso that the Soviet Union exercize comparable self-restraint. At the time of the debate on this amendment, administration officials and several Senators made claims about the imminent Soviet MIRV threat. This year we discover that what was imminent in 1969, was imminent in 1970 and 1971, and yet the Soviet Union still does not appear to have developed a MIRV warhead. Secretary Laird has said as much in his latest Defense posture statement. In other words our whole MIRV program was based on an "imminent" threat which has not yet become a real one. And now we have a full-fledged MIRV program which the Soviet Union will undoubtedly be striving to match, if the history of the development of MIRV is anything like the postwar history of the arms race between the United States and the Soviet Union.

Everyone says the cat is out of the bag with respect to MIRV. It is too late to convince the Soviets to negotiate. I am reluctantly inclined to think that is true, but I do not think it has to be true anymore, not if we really intend to put a stop to the arms race. What we need to prevent this kind of cycle beginning again is a meaningful agreement at SALT, and a commitment to negotiate other agreed formula for the limitation and eventual reduction of armaments.

I think that we should all be cautious not to lull ourselves into thinking that a SALT agreement is the end of the arms race line. From all the reports we have as to the nature of the agreement which the President is likely to sign in Moscow, it will be a very limited agreement. However limited, it will be welcome and should serve as a catalyst for further arms control agreements, not only with the Soviet Union, but with other nuclear and nonnuclear weapons.

Just one example of taking up where we left off is in negotiating a Comprehensive Test Ban Treaty, a logical and timely extension of the Limited Test Ban Treaty in which I was privileged to play an important part. As a cosponsor of the two resolutions now before the Senate on the comprehensive test ban, and as one who has continually spoken out in support of the CTB, I urge the President to move ahead in this area. This treaty would serve to reinforce our pledge in the Nonproliferation Treaty, and it would build the kind of confidence among nuclear and nonnuclear countries that we are moving out of the arms race.

There are other areas where we should be placing our undivided attention: Antisubmarine warfare, ceilings on land-based and sea-based missile systems, prohibition of chemical as well as biological warfare, to name but a few. It is regrettable to think how much time and effort will have to be spent in curtailing what we spent so much time in producing. At least the last effort will be far more constructive.

Mr. President, some of the issues I have been discussing are touched on in an interesting article written by Herbert Scoville and published in the April issue of Foreign Affairs. I ask unanimous consent that this article and another by the same author, published in the New Republic, which discusses the evolution of MIRV, be printed in the RECORD.

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

BEYOND SALT ONE

(By Herbert Scoville, Jr.)

Although President Nixon's goal of achieving an initial agreement at the Strategic Arms Limitation Talks (SALT) before the end of 1971 failed to be realized, it still appears likely that at least some limitations will be negotiated by the time that he and Premier Kosygin meet in Moscow in May. After SALT recessed in Vienna the President reported in his state of the world message on February ninth that a consensus is developing that there should be a treaty setting comprehensive limitations on anti-ballistic missiles (ABMs) and an interim agreement to freeze certain offensive arms.

The primary objective of an ABM limitation is to foreclose the acquisition of missile defense with nationwide coverage, which might raise fears about the continued viability of a mutual deterrent posture. The treaty will probably be constructed along the following lines. The number of ABM interceptor missiles will be restricted to between 100 and 300. The lower value would be more satisfactory from security, arms control and economic points of view, but even the higher value would prevent the acquisition of ABM systems which could threaten either nation's deterrent. The argument about whether to retain 100 or 300 interceptors is spurious, since neither level will provide any realistic protection. More important would be limits on the location and perhaps also the number of large, high-performance ABM radars, which are most critical for a nationwide defense because of their size, time for construction, and expense. They would be almost impossible to deploy secretly. Under a treaty, their locations would probably have to be restricted to the Moscow area for the Soviet

Union and the neighborhood of Minuteman sites for the United States; otherwise fears could be generated over a possible clandestine deployment of a nationwide ABM system.

The nature of a possible agreement on offensive weapons is much less clear, and the details may even be left for further negotiation. Former Deputy Secretary of Defense David Packard, in a press conference on October 21, 1971, said that an agreement on ABMs by themselves might be acceptable if it were a useful step toward the longer-term objective of containing the offensive buildup. This would then become a high priority follow-up action to the first stage of SALT. It is more likely, however, that there will be some agreed limitation on the total numbers of ICBMs (intercontinental ballistic missiles based on land). This could be in the form of a numerical ceiling or a freeze at existing levels. From the American point of view, it would be extremely useful to include in this numerical limit a sub-ceiling on the very large Soviet SS–9 type ICBMs. The new, very large launchers, about 30 of which have been reported to be under construction in the last year would fall within this category. Such a sub-ceiling may present certain difficulties for the Soviets unless the United States is willing to accept some similar restraint, but they may be satisfied with their present force level of slightly more than 300 operational or under construction.

The United States also is reported to be seeking a halt on Russian submarine construction even though they still lag considerably behind the United States both quantitatively and qualitatively in operational submarine-launched ballistic missiles. Since the United States is unlikely to be willing to forgo its conversion of the Polaris to the Poseidon missile, which has four times the payload and ten to 14 MIRVs (multiple warheads each capable of being aimed at a separate target), the chances of agreement in this area do not appear very promising. However, they would be somewhat improved if the Russians were allowed to complete those submarines now only in the early stages of construction, since they would then have numerical but not qualitative parity with the United States. A failure to limit submarine missiles is not serious since these are considered as primarily deterrent weapons because they are invulnerable and would be difficult to use in a coordinated and accurate first strike against the opposing deterrent. The complete destruction of the other side's strategic forces by the nearly simultaneous launchings from about 30 submarines and follow-up firings to correct for initial failures presents extraordinary operational difficulties.

It is most improbable that the first stage of SALT will place any qualitative restrictions on offensive missile systems, apart from a possible limit on the number of large SS–9 type missiles. The replacement of existing weapons by new models will be permitted and, if the experience of the Limited Test Ban Treaty is representative, will be encouraged as a safeguard against possible violations. Certainly there will be no restrictions on MIRVs. The United States will be free to continue its Poseidon submarine missile and Minuteman III ICBM deployments with MIRVs, and the Soviets to begin testing and deploying MIRVs as well.

Even with an agreement of this limited nature, SALT will have made important strides toward slowing the arms race and stabilizing the present state of mutual U.S.–U.S.S.R. deterrence. The ABM limitation by itself will guarantee a continued secure deterrent posture on both sides regardless of what type of offensive programs are allowed to continue. MIRVs can threaten only the fixed land-based force and not the mobile submarine missiles which, by themselves, are more than adequate to provide an assured retaliatory capability as long as ABMs are kept small. There are no technological advances in anti-submarine warfare (ASW) which could provide in the foreseeable future a capability of destroying almost simultaneously an entire missile submarine fleet.

However, since there will be no controls on MIRVs, in time the ICBM and bomber parts of the deterrent force may come to be considered vulnerable. While at the moment there do not appear to be any reasonable methods by which both these weapons systems can be destroyed in a surprise attack—a Russian strike against our bomber force would alert the Minuteman ICBMs, or vice versa—nevertheless, some authorities have suggested that so-called "pin-down" tactics might be used to accomplish this objective. These tactics involve the maintenance of a continuous barrage of submarine-launched warheads exploding above our Minuteman fields, not to destroy but only to prevent the launching of the ICBMs. These explosions would have to be timed to coincide with a submarine missile attack on our bombers and continue for a minimum of 30 minutes until their ICBMs could destroy our Minuteman silos. While such an attack would involve immense and extremely wasteful expenditures of weapons and require extraordinary coordination, planners using worst-case assumptions may come to take it as more than a fantasy when, and if, the force levels become very large. In sum, even though a first-stage SALT agreement would be a major milestone, many additional actions will be required to permit it to endure and expand.

If the preceding picture of the strategic situation following an initial SALT agreement is generally correct, there should be two main follow-through objectives for our unilateral defense planning and future arms-control negotiations. First, we should make every effort to assure that neither side takes any actions which could erode the mutual deterrent posture established by SALT. In fact, every effort should be made to strengthen it still further. Areas of potential concern should be narrowed or eliminated wherever possible either by unilateral decisions on weapons programs, further arms limitations, or even by exchanges of information. For example, the construction of a large space radar might be misconstrued as part of an ABM system unless this was carefully explained to the other side.

This objective, however, may not always be very easy to achieve since SALT will probably not limit the qualitative arms race in any significant way. Unless care is exercised by each side in its weapons programs, actions that might appear to the other side as threatening its deterrent could be taken in the name of protecting against possible treaty abrogation or violations. Thus, development of a new MIRV guidance system might be construed, perhaps incorrectly, as an attempt to obtain a first-strike capability. Similarly, new sophisticated radars for anti-aircraft defense might appear to be ABMs in disguise. Soviet replacement of their present ICBMs by new hardened launchers could be misinterpreted as an attempt to circumvent a ceiling on large missile launchers. President Nixon's reference, in his state of the world message of February 1971, to a hoped-for alternative to a retaliatory attack against Russian cities could also be misconstrued as an attempt to erode the deterrent posture by providing a nuclear-war fighting capability.

Since most of these troubles will result from the failure of SALT to place any restrictions on qualitative improvements, a second major objective would be to move on to arms-control measures directed at rectifying this omission. This presents many difficulties in view of scientists' innate desire always to seek technological innovation. Research and development will be justified as a possible hedge against breakthroughs or cheating by the other side. After the Limited Test Ban Treaty in 1963, expanded programs were even demanded in order to maintain the viability of the weapons laboratories in the event the Treaty was abrogated.

Limits on qualitative improvements present particularly difficult problems in the area of verification. Many important modifications of weapons systems result in no observable changes in the characteristics of a weapons system. For example, a missile guidance system can be made more accurate by substitution of a better computer inside the missile. Furthermore, research and development in the laboratory phases are difficult to monitor and easy to conceal or screen under the guise of legitimate activities. No amount of even intrusive inspection appears practical to provide assurance that secret research and development programs are not under way. One cannot station an inspector at every research facility; even if there, he could easily be misled. Only when a weapon or a component reaches the stage of field or flight testing does it become visible and even then not always adequately verifiable. However, limitations on field tests offer a good place to start in curbing the seemingly endless desire to make technological improvements.

ANTISUBMARINE WARFARE

Under a SALT agreement as visualized above, the submarine missile systems become, even more than at the present time, the primary component of the deterrent force. Therefore, every effort should be made by both unilateral decisions and multilateral arms-control actions to maintain and, where necessary, strengthen it. As long as ABMs are severely limited, the only threat to this weapons system can come from antisubmarine warfare. At the present time there is no technology which can in the foreseeable future place in jeopardy simultaneously a submarine force of 30 to 40 vessels, even if they did not employ countermeasures. However, in time, with concentrated effort, new developments might give rise to fears on this score, and efforts should be made to foreclose such an eventuality. Therefore, restrictions on antisubmarine warfare capabilities should be sought in much the same way they have been sought on ABMs. To date, very little attention has been paid to this area of arms control.

By comparison with ABMs, however, controls on antisubmarine warfare will be very much more difficult to achieve. In the first place, extensive, albeit strategically ineffective, antisubmarine systems are already available to both the United States and the Soviet Union as well as many other countries, and secondly, antisubmarine defenses have tactical as well as strategic military applications. For example, they are a key element in the protection of surface shipping, both naval and merchant, in a protracted warfare situation such as in World War II or even in more limited conflicts as might occur in the Mediterranean. Despite these drawbacks, there are a number of arms-control measures which can guarantee still further the indefinite viability of the submarine missile deterrent force. Fortunately, any antisubmarine warfare system, if it were to have dangerous capabilities, would have to be very extensive, would take a long time to build and would be obvious to all concerned. A clandestine antisubmarine warfare program to negate the Polaris deterrent would be impossible.

One control measure would be a limitation on the number of so-called hunter-killer submarines, *i.e.*, submarines designed to follow and destroy other submarines. A large number of such ships would be needed in order to have a reliable capability to eliminate almost simultaneously 30 or more missile submarines. The continuous tracking of ballistic missile submarines, either by other submarines or surface vessels, might be forbidden in an arms-control agreement. An-

other approach might be to designate certain ocean areas that did not include the sea lanes normally traveled by merchant and naval vessels as regions within which anti-submarine operations would be banned. The stationing of acoustic detection systems and submarine tracking ships and aircraft would not be allowed in these areas, which could then be used for the invulnerable deployment of the submarine missile deterrent forces.

Parallel to these measures, research and development could be continued on advanced submarine missile systems which would decrease their vulnerability to possible future anti-submarine measures. The American Underwater Long Range Missile System (ULMS) programs are examples of this. The most useful advance in this field would be the development of a new missile (originally nicknamed EXPO, now called ULMS I) with a longer range than Poseidon in order to permit the submarine to launch its missiles from larger ocean areas less subject to anti-submarine attack. This missile should be designed with a capability of being launched from existing Polaris submarines to avoid the very expensive requirements of replacing the existing fleet. In the longer term, if a threat to submarines should develop, quieter and less vulnerable, or smaller but more numerous, submarines might be other approaches. However, the present threat from anti-submarine warfare is not sufficiently near or even well defined to require construction and deployment decisions on these new weapons in the near future. Ship construction now would be a waste of scarce funds and might result in building weapons designed against the wrong threat. There is not even a requirement for a new missile at this time, and it is hoped that a race in this area can be avoided.

RESTRICTIONS ON IMPROVEMENT IN EXISTING SYSTEMS

With ABMs frozen at low levels, the need to improve further existing offensive strategic weapons systems may be largely eliminated. More advanced weapons would be required only if one were seeking to acquire a first-strike or nuclear-war fighting capability. And this would merely serve to increase the risk that a nuclear disaster might occur. Therefore, it is incumbent on both the United States and the Soviet Union to take such actions as possible to halt the qualitative arms race either by agreed measures or, more practically, by reciprocal unilateral actions.

An agreement that no missile system could be upgraded by any change in its external configuration would be very useful, although it would not halt many improvements. Such a restriction would apply not only to the missile itself, but also to the characteristics of the launch site. Since only those changes that could be observed from the outside would be banned, such an agreement could be verified adequately by national or unilateral means. It would prevent the replacement of existing systems by those with radically new characteristics such as the substitution of much larger missiles for the present models.

Thus, the Soviets could not supersede their obsolescent early ICBMs with the newer SS–11s and SS–13s or even their SS–9s with still larger missiles (a possibility that has caused so much concern in some circles during the past year). The United States, however, would not be permitted to convert any more Polaris missiles to Poseidons. This would not, of course, prevent replacement of single warheads by MIRVs or improvements in accuracy, but these changes would be restricted within the envelope of the presently deployed models.

A still further and more useful step toward qualitative restrictions would be to place limits on the number of missile test firings that either the United States or the Soviets could conduct in any one year. A complete ban on test firings would probably not be feasible because of the necessity to conduct a number of tests in order to assure the reliability of deployed systems and to train crews. However, if the quota on allowed firings was kept reasonably low, to perhaps ten or even 20 per year, this would certainly place restrictions on development programs for new systems. Such an understanding could be monitored by our existing unilateral capabilities, and it could be reinforced by an understanding that the firings would be announced in advance and occur only on specific test ranges. An agreement of this type would strongly inhibit the development of MIRV systems, particularly those with high accuracy. A specific ban on MIRV testing would be highly desirable, but the overwhelming American lead in this area and our previous reluctance to negotiate seriously on such a ban do not allow much optimism for its success.

REDUCTIONS IN NUMBER OF WEAPONS

Once an agreement has been reached to limit ABMs, it will become apparent that the present number of offensive launchers, presumably the ceiling agreed to in SALT One, would be more than adequate to provide a deterrent force. This would be even more obvious if MIRVs were allowed. In time, it might be hoped that either by agreement or by gradual, reciprocal, unilateral phase-downs, the number of these launchers could start being reduced. Since fixed land-based ICBMs will eventually come to be believed vulnerable, they should be the first candidates for elimination. Cutbacks would have not only security value, but also important international political implications. They would show that at least the nuclear powers were willing to take steps to decrease the very large size of their present arsenals. This would be extremely valuable in promoting our policies on the nonproliferation of nuclear weapons.

Of course, if the reduction reached a point where the number of land-based ICBMs became very small, then the vulnerability of this part of the deterrent to a first strike would be quite great; however, this would not be serious as long as the submarine deterrent remained secure. For this reason, it would not be wise to reduce the submarine missiles until a very much later period at which time all five nuclear weapons countries might be party to the discussions. Reduction in the size of the ABM systems even further than promised in the first stage of SALT would also be a very useful factor in strengthening the deterrent. Intercontinental bombers could also be decreased, and new aircraft for replacement could be dispensed with, saving large sums of money.

FORWARD BASED SYSTEMS

The Soviets originally sought to include in SALT limitations on Forward Based Systems (FBS), *i.e.* those shorter-range nuclear delivery systems based in forward areas which have, nevertheless, the capability of striking the Soviet Union. However, they have apparently dropped this requirement, postponing negotiations on such systems to a later date. The fact that only the United States has such systems presents a serious problem in negotiating their control, and they should probably be tackled not in SALT, but as a part of agreements on European security and mutual and balanced force reductions.

However, their consideration cannot be indefinitely neglected since, to the Soviets, they must always be seen as a threat to their national survival, and they are unlikely to agree to any further significant reductions in strategic forces until they are dealt with. A first step might be a U.S. undertaking not to enlarge these forces. The phased redeployment of such aircraft back to the United States in exchange for Russian withdrawal of both nuclear and conventional forces in Eastern Europe would appear another useful approach to this problem. Reduction in their numbers could be traded off against reduction in Soviet shorter-range missiles which threaten European centers. The British and French nuclear forces would also have to be taken into account. The negotiation of limitations on armaments stationed in Europe has extraordinarily difficult and complicated political ramifications and cannot be expected to produce early results. However, the time has come to make serious moves in this direction.

COMPREHENSIVE NUCLEAR TEST BAN TREATY

An arms-control measure which would have beneficial effects far beyond the U.S.-U.S.S.R. strategic balance would be achievment of a complete ban on nuclear weapons tests. The achievement of qualitative restrictions on delivery systems has proven extremely difficult, but a comprehensive nuclear test ban would be a step to limit improvements on many of these. While both countries undoubtedly have warheads which are satisfactory for their first-generation MIRVs and ABMs, a test ban would inhibit the development of many second-generation systems. This could be particularly helpful to U.S. security. The Russians may not yet have developed warheads for a MIRV system that could threaten the Minuteman deterrent, since they have not yet had the first test of such a delivery system. A nuclear test ban in the near future would probably prevent the Russians from having warheads with the necessary yield, weight and dimension to be used in a missile which dispersed more than three accurate MIRVs.

It is also unlikely that the Soviets would have already developed a warhead for an advanced ABM system which might be clandestinely deployed under the guise of an air-defense weapon, since prior to an initial ABM agreement at SALT they would have had no requirement to do so. Thus, a comprehensive test ban treaty would provide increased confidence that the ABM limitations at SALT were being honored. Fears have also been expressed that, without testing, our stockpiled nuclear weapons would become unreliable. However, in the past, deterioration due to aging has been checked by dismantling weapons; never have we conducted nuclear tests solely for the purpose. If a complete ban on testing were, over a period of years, to decrease confidence in the reliability of offensive warheads, this would only enhance the existing state of mutual deterrence, since it would reduce confidence in an ability to carry out a first strike.

In addition to such effects on the U.S.-U.S.S.R. strategic balance, a comprehensive test ban treaty would be an important factor in reinforcing U.S. nonproliferation policies. It would make much more difficult the acquisition of a reliable nuclear force by a non-nuclear nation. Continued nuclear testing by the United States and the Soviet Union will inevitably mean that advanced weapons technology, which may be of marginal value to them, will eventually be available to many countries and to many people. Furthermore, restraint on the part of nuclear powers would provide additional inducement for the non-nuclear nations to accede to the nonproliferations treaty (NPT). A country such as India, which has refused to sign the NPT, might find it extremely difficult politically to refuse to adhere to a comprehensive test ban treaty since it has been a key element in its past disarmament policies.

Neither France nor China is likely to adhere initially to any test ban treaty, the former primarily for political reasons and the latter because it still requires considerably more development to acquire a varied nuclear arsenal. While unfortunate, this still does not significantly reduce the value of the treaty, which would once and for all end the continuing attempts of the United States and the Soviet Union to advance nuclear weapons technology. China is still so

far behind both the United States and Russia that it is inconceivable that any unilateral nuclear testing on her part could require additional tests by either of the other two nations within the next ten to 20 years. Our more than 500 tests over 25 years have provided us with a large stockpile of weapons-design information. Nuclear weapons to deal with the U.S.-U.S.S.R. confrontation are more than adequate to handle the slowly emerging Chinese nuclear capability—or in the case of Russia with that of France as well.

In the unlikely event that this were no longer true in the distant future, any treaty would undoubtedly have an escape clause similar to that in the Limited Test Ban Treaty which would provide the right to withdraw if extraordinary events related to the subject matter of the Treaty jeopardized our supreme interest. The unlikely occurrence of a Chinese or French nuclear breakthrough would certainly fall into this category.

Finally, the negotiation of a comprehensive test ban treaty is not only militarily and politically opportune, but it is also timely from a technological viewpoint. The results of U.S. research and development programs have now demonstrated major improvements in seismic capabilities to detect and identify nuclear tests. The value of on-site inspections, and the risks from clandestine testing, have now been very greatly reduced. While there will always be some threshold below which an occasional secret test might be conducted, the risks from a violation of this type would be more than overbalanced by the gains from halting all tests of high yields.

An important outgrowth of SALT can be the continued exchange of views on strategic policies in order to reduce misunderstandings. This might be maintained by the continuation of SALT negotiations or by some newly established mechanisms. Even with the best of intentions on both sides, many legitimate unilateral actions may be taken which could look threatening to the other side or seem to be violations unless explanations can be provided. This will be particularly significant since continued qualitative improvements will probably not be forbidden in the first stage of SALT.

For example, the Soviet Union might choose to begin deployment of mobile ICBMs in order to decrease the vulnerability of their land-based missiles to American MIRVs. To the United States this might look like a Russian attempt to increase secretly the size of their force since it is more difficult to count the number of mobile missiles deployed at any one time. It is not practicable to have simultaneous observation of the entire Soviet Union. Conceivably, the Russians might be able to reassure American authorities by providing information to reduce uncertainties on the total number of missiles deployed. Similarly, the U.S. development of new methods for penetrating an ABM could look to the Russians like a system for attacking Soviet ICBMs. An American explanation of the purpose might reassure the Russians, who in turn might be able to provide information which could alleviate our concerns about their air defenses.

With or without an arms-limitation agreement, the most important element in keeping the strategic arms race from getting completely out of hand has been the ability of both nations to have accurate information on the deployed weapons of the other side. For years now our Secretaries of Defense have been reporting with little argument the number of Soviet ICBMs and missile submarines deployed and under construction. Only on future programs or intentions have there been differing opinions. Without this information it would have been impossible even to have contemplated the type of agreement being discussed for the first phase of SALT. If for any reason these capabilities were lost, then any SALT agreement would be in serious jeopardy.

It has been reported by some sources, but never confirmed, that the Soviets have tested a space vehicle which might be capable of intercepting a satellite. Any such system would be susceptible to countermeasures. However, if either nation were to interfere with the other's systems for gathering information, this would be a very serious act, perhaps only just short of war.

Certainly, satisfactory reassurances against any recurrence would have to be provided or the entire SALT agreement would soon break down. Since it would be at least several years before such loss of information could provide an opportunity to obtain a meaningful strategic advantage, there would be ample time to take countermeasures. Perhaps one of the outcomes of the first phase of SALT, or of the next, could be an understanding that neither side would take any steps to negate unilateral information-gathering systems that do not infringe on national sovereignty.

Even if the first phase of SALT succeeds only in holding ABMs to a low level, it will have a major effect in slowing the strategic arms race and ensuring the continuation of a mutual deterrent posture. However, since at best the restrictions on offensive weapons will be quite limited in scope and probably place little or no controls on qualitative improvements, further steps will be needed to strengthen and broaden the agreement. Decisions on unilateral weapons programs as well as further arms limitations must be made with an eye toward ensuring that the application of new technologies does not weaken deterrence. Actions justified as safeguarding against abrogation or violation of a treaty must not be allowed to destroy the original purpose of the agreement. Continued bilateral consultations will be required to clear away misunderstandings.

An initial agreement at SALT, even if limited in scope, can mark the beginning of a new era in the nuclear weapons age. Opportunities will be opened up not only for halting the upward march of the arms race, but also for redirecting it downward so that the risks of a nuclear conflagration are reduced and the economic burdens of weapons programs lightened. Many of the new measures proposed will not be arrived at easily. Strong pressures for new weapons programs as hedges against possible treaty violations will have to be resisted vigorously. Complacency after an initial agreement must not be allowed to slow the drive toward further limitations.

MORE, MORE, MORE WEAPONS

(By Herbert Scoville, Jr.)

Admiral Thomas H. Moorer, chairman of the Joint Chiefs of Staff, warned Congress on February 16 that unless an "effective" US-USSR agreement limiting the nuclear weapons build-up is reached soon, the US must get new weapons quickly or risk the "possibility" of losing "overall strategic superiority . . . within this decade." The "mere appearance of Soviet strategic superiority could have a debilitating effect," he said, "even if that superiority would have no practical effect on the outcome of an all-out nuclear exchange"—The Editors

In 1971 the Institute for Strategic Studies estimated that the US had 6000 nuclear warheads fitted to delivery vehicles that could reach the USSR, and that 2000 Soviet warheads could strike at the continental United States. In the United States, there are 150 population centers with more than a hundred thousand persons each. In the USSR, there are about 175. The United States could overkill the population-industrial centers of the Soviet Union, 34 times, and the Soviets could easily destroy comparable centers in the United States 13 times over. So, who is ahead, the Soviet Union or the United States, with repsect to nuclear military power? If the US and the USSR were to exchange their strategic forces, would it make any military difference?"—Seymour Melman

In his State of the World message, February 9, the President defended our Safeguard ABM program by saying: "The Soviet strategic forces, even at current levels, have the potential of threatening our land-based ICBMs if the Soviets choose to make certain qualitative improvements. They have the necessary technological base." What Mr. Nixon and Secretary of Defense Laird mean is that present Soviet ICBM force, about 300 of the large SS–9 type missiles, would be capable, when equipped with sufficient, accurate MIRV's (multiple warheads capable of being aimed at separate targets) of destroying a large fraction of our Minuteman ICBMs. While the Russians have not yet tested a true MIRV system, there is no doubt that they have the technological ability to do so at any time, and could begin deploying such weapons a few years later. Each SS–9 can deliver six or more MIRVs, the number required if 300 SS–9s are to be considered a threat to the Minuteman force. About these facts there is little argument. But why has the administration ignored them until now? Why has it instead concentrated its entire attention not on a large Soviet MIRV capability but on the number of large SS–9 type missile launchers?

In 1969, when President Nixon first made the decision to go ahead with the Safeguard ABM, Secretary Laird used as a primary justification the rapid buildup of the Soviet SS–9 force, which he believed was evidence of Soviet desire to acquire a "first strike" capability. He postulated that with a continuing construction rate of about 50 missiles a year, the Russians could have about 450 SS–9s operational before 1975, and that with each equipped with three MIRV's, they would be able to knock out in a first strike 95 percent of our Minuteman force. This calculation of three MIRVs per missile was selected because since 1968 the Soviets had been testing SS–9 missiles with three reentry vehicles and Mr. Nixon and the Defense Department, despite reservations by many intelligence analysts, chose to describe this system having a "footprint" or impact pattern which could threaten our Minuteman. Had they selected an as yet untested MIRV system, the timing of the Russian threat would have been delayed several years and the Safeguard ABM would have been harder to justify. Now Secretary Laird in his 1973 Annual Defense Dept. Report states that "with significant qualitative improvements [MIRVs] in Soviet ICBMs *even without increases* in the number of Soviet ICBMs, the postulated threat to Minuteman in the last half of the 1970s could grow to a level beyond the capabilities of the four site Safeguard defense of Minuteman. Therefore we propose a FY1973 Hardsite [ABM] program. . . ."

As the ABM debate intensified, the preoccupation with the number of Soviet SS–9 launchers became a key factor in all US strategic planning. The projected SS–9 buildup has profoundly influenced the US position at the Strategic Arms Limitation Talks (SALT). A halt to the Soviet SS–9 launcher program became the cardinal objective of our negotiators. Since the Safeguard ABM had been justified as a counter to the Soviet SS–9 threat, the US could not agree to limiting ABMs without at the same time stopping the SS–9 program. In fact, for the past two years, the Safeguard ABM has been and is still defended in Congress primarily as a bargaining chip in the SALT negotiations. In December 1970 when the Soviets proposed an ABM limitation as a first step, President Nixon said no, insisting that limits must be placed on both offensive and defensive weapons in order to preserve stability. Progress

in this area was thus delayed for more than a year. In the meantime, both the Russians and the Americans increased the size of their strategic forces.

While all attention was focused on the number of SS–9 launchers, the administration during the entire three years of SALT made no serious attempt to limit MIRVs. Although Senator Brooke in 1969 urged a moratorium on MIRV testing and deployment on both sides, this idea was discouraged by the executive branch. A year later, the Senate passed by 72 to 6 a somewhat watered-down version of the Brooke resolution (S–211) which, nevertheless, had the clear intent of urging restraint on MIRVs. This, too, was ignored, instead the US went rushing ahead with the initial deployment of MIRVs on both the Minuteman and Poseidon missiles, long before security required them.

The only concession to Congress was an undertaking by Secretary Laird to halt a program to improve the *accuracy* of US MIRV's. Even the sincerity of this action has come into question as the administration, each year, has sought more than $100 million for the development of improved missile guidance systems.

At SALT, the United States made one attempt for the record to interest the Russions in MIRV controls, but this was coupled with a requirement for onsite inspection that was obviously unacceptable and provided little increased protection against possible violations. This position was put forth despite reported contrary recommendations by the President's prestigious Arms Control General Advisory Committee.

Meanwhile, what happened to the threat which Secretary Laird postulated as evidence of Soviet intentions to acquire a capability to launch a first strike against the US? The Soviet SS–9 construction program slowed markedly. From August 1969 to May 1970 no construction of new launchers was observed. Then in the spring of 1970, just when the administration was arguing most vociferously for its Safeguard ABM as a SALT bargaining chip, the construction of a small number of new Soviet launchers was observed. Even this was cut back until the winter of 1971, when construction of a new type of large launcher was spotted. Despite initial panic, only about 30 of these were started during the past year, so that the number of large Soviet ICBM launchers operational and under construction is now little more than 300, a small increase above the "over 275" reported as of August 1969. This increase of about 30 in more than two-and-a-half years should be compared to 50 per year predicted in justifying the Safeguard ABM. It is clear that the predicted 450 large Soviet missile launchers will not be operational until long after 1975 and probably never. It is rumored that the Soviets have agreed to place a ceiling on such large launchers as part of a Phase I SALT agreement to be announced in May.

The Soviet MIRV program has also not come to pass. The administration fear, that the missile tested with three reentry vehicles could threaten Minuteman, proved to be only another false alarm. The Russians now have tested systems for dispersing three warheads from both the SS–9 and more recently the SS–11, but neither is believed capable of attacking Minuteman. Secretary Laird himself notes that "the Soviets probably have not tested MIRVed missiles thus far. The last multiple reentry vehicle [not MIRV] tests were in late 1970." General Ryan, chief of staff of the air force, testified a year ago that the Russians would have to develop an entirely new reentry vehicle and guidance system before they could achieve such a capability. Rather than expending their technological efforts on a system for dispersing three MIRV's, it is most likely that the Soviets will, when they move into this area, go directly to one which will disperse six or more. It was such a system that the opponents of the Safeguard ABM and the proponents of a MIRV moratorium always argued was the real threat to our Minuteman force. It is to such a system that Mr. Nixon referred in his State of the World message.

Thus, we have come full circle in our strategic policies. By this May, a limitation on the number of large Soviet launchers will probably have been achieved at SALT, in exchange for foregoing the Safeguard ABM. But it is apparent that we have been aiming at the wrong target, for President Nixon and Secretary Laird now admit that Soviet strategic forces, *even at current levels,* can threaten our landbased ICBMs. We have been trapped in a blind alley. The problem today, as it always has been, is to stop MIRVs so that these potentially destabilizing weapons do not become a part of the Soviet nuclear arsenal.

Unfortunately, time has moved on and it is probably too late to achieve the desired controls. Technically, it would still be possible to verify a MIRV test and deployment ban, since the Russians have not yet developed and tested a true MIRV system. Such testing would be readily apparent to US information gathering systems without requiring any onsite inspections. The US, however, has developed, tested and deployed two MIRV systems, and it is most improbable that the Russians will agree to forego the MIRV option completely and leave the US so far in the lead. The administration, which has disregarded all attempts to exercise restraint in this area, is unlikely to cut-back or even stop our MIRV programs.

President Nixon has recognized the consequences, He announces: "We are also initiating a program at a time of increasing threat to our landbased missiles." With these words and with the request for nearly $1 billion for a new generation submarine missile system—ULMS—he and Secretary Laird are starting us off on a new lap in the arms race. Is it really necessary? True, the Soviets are building up their submarine missile forces to a point where, within a few years, they will have achieved numerical parity. But their submarine systems are at least one generation behind ours, so that even if it were a question of maintaining US superiority, a posture which the President professes to have eschewed in favor of sufficiency, there would be no need for this new program.

More importantly, our present Polaris-Poseidon system is faced with no threat that requires the replacement or the addition of more submarines. When the Poseidon conversion is completed in the mid–'70s, the US will have a submarine fleet of 31 ships, each capable of firing 160 warheads at the Soviet Union, in addition to 10 of the older Polaris submarines which are about on a par with the present Soviet Y-class vessels. All defense authorities agree that there is no anti-submarine threat that could in the foreseeable future negate this deterrent. Surely the 5000 warheads, each of which is several times greater than the Hiroshima bomb, should be sufficient to deter a Soviet first strike, even if our Minuteman force became vulnerable. With an ABM treaty, which President Nixon states may soon be completed, virtually all of these warheads should be able to penetrate to Russian targets.

We will have made major progress if we get an ABM treaty. Let us build on that to obtain additional limitations rather than trigger a race in a new direction. Even if the Soviets continue to expand their submarine force beyond our levels, we should not allow this to panic us into deploying a new system. There is no reason why we have to be two laps ahead of the Soviet Union. Better to maintain flexibility by continuing research and development on a broad range of possible systems in order to be in the best position to cope with a threat, if it should arise in the long-range future. We have wasted three years tilting with the SS–9 launcher windmill. It is time that we realistically evaluate our security requirements and ask ourselves whether still more strategic nuclear weapons, of still greater sophistication, are needed to deter a nuclear attack or to prevent us and our allies from being blackmailed.

WHOSE CENTURY?

Mr. HUMPHREY. Mr. President, I invite the attention of the Senate to an article by Mr. Thomas L. Hughes, president of the Carnegie Endowment for International Peace, published in the April issue of Foreign Affairs. It is a thought-provoking article about change and what it portends for our future?

What I think is most valuable about the article is that it provides the kind of dramatic assessment some may need to prepare for what lies ahead, to realize that the wine has changed and so has the bottle.

Mr. President, I ask unanimous consent that this interesting article be printed in the RECORD.

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

WHOSE CENTURY?

(By Thomas L. Hughes)

"The world of the 20th century, if it is to come to life in health and vigor, must be an American Century . . . our Century."—Henry Luce, "The American Century," *Life,* February 17, 1941.

Despite many qualifications, there are several senses in which Mr. Luce was right—senses in which this has turned out to be the American Century, far beyond anyone's poor power to add or detract. In all the unfolding indices of quantitative preeminence, the United States is indeed a new kind of power in the world. Our gross national product, our massive output of the food the world needs, the unequaled scale of our technology, the burgeoning talents that still pour by the millions from our troubled educational system, the qualitative skills of our manpower, the seed money with which for years we have capitalized the new world bank of the social sciences, the manifold horizons of the computerized century—all these and more testify to the steady pulsations from contemporary America which circle and recircle the globe. They evoke demands and cravings for things American, often precisely among those very people and governments most vitriolic about official American policy. America's great twentieth-century technological revolution sweeps across sovereignties, beats against Walls, and eats away at Iron Curtains. The full implications of this peaceful, pulsating phenomenon for those whose lives and livelihoods have hitherto been at the whim of managed societies—as well as for interests and ambitions of those in charge of such societies—remain to be fully tested.

But there is much more to the century than that. Centuries have many dimensions. If the world's prominent men of a century ago were to rise today from their graves and look around them, who would be the most surprised? Who among them, politicians all, would be most transfixed by the ironies of history and the vagaries of circumstance? Where today would they find their lineal descendants? How far would they have to travel to feel at home again? Who continues their tradition? Across what cross-cultural leaps?

There is the assassinated Tsar Alexander II, interred in St. Petersburg, awakening in Leningrad. How much of the surroundings are Lenin's? And how much are Peter the Great's?

There is Cecil Rhodes, the impatient imperialist, in his tomb in Bulawayo. What sanctions, if any, would he employ against the cowboy champions of white supremacy who have taken over his Rhodesian patrimony and broken with his Queen?

There is Lincoln in Springfield, perplexed about another North-South war 10,000 miles away in Vietnam. Is his first groping reaction really a misconception that America has been committed to a secessionist cause?

There is Bolivar in his pantheon in Caracas. Like many others he discovered that life was unfair. Would he still be sure, as he once was, that to "serve a revolution is to plow the sea?"

There is Bismarck at Friedrichsruh. He is entitled to smile with self-satisfaction over the continuing triumph of blood and iron, but the pursuit of his prophetic principle devoured Prussia in the process and cut his capital city in two.

There is Hung Hsiu-ch'uan, leader of the Taiping Rebellion, whose peasant revolt once swept 11 provinces of China. He was ruling in Nanking in the 1860s. If he had waked in that city during the Cultural Revolution a hundred years later, he would have found a familiar fratricide.

They were among the leaders of the age a century ago. They all tried "to make history, not write it"—in Bismarck's words—"to set the clock of evolution at the right hour." But since then many clocks have struck, turning success into failure for some, defeat into victory for others. For still others slumber remains simply slumber. They and their work testify to the uniqueness of history, to the great moments which never recur, to the fate which each man has at the ends of his successors, to the tricks and the toll of the centuries.

Here, in microcosm, lie some large questions: *Whose* century has it been? *Whose* century will it be? But behind these questions lie the other ones: *Which* century was it then? *Which* century is it now?

I. WHICH CENTURY

In 1900 there was a great argument over whether that year marked the first year of the twentieth century or the last year of the nineteenth. But beyond the artificial dates which the calendar sets, there are many ways to think about a century. Thus we now know that the nineteenth century began in 1815 and that it actually ended in 1914, not 1900. It is plausible that the twentieth century is already over—that the problems of the 1930s, forties, fifties and sixties have more to do with one another than with a new century which has already arrived. In a world of agitation, it is hard to tell when, if ever, a new century is far enough advanced to be irreversible—when the turbulence has jelled sufficiently for characterization. Centuries overlap and phase into one another.

Even worse, a century, like beauty, shifts with the eye of the beholder. Thus Victor Hugo aspired to live for a *future* century. He represented "a party which does not yet exist," civilization. "This party will make the 20th Century," he said, "and from it will issue first the United States of Europe and then the United States of the World." More often, however, people have preferred to live in *past* centuries, like those described by Gilbert in "The Mikado":

"The idiot who praises, with enthusiastic tone,
All centuries but this, and every country but his own."

Some things are immune through centuries of change. For instance, there exists a papyrus dating from the Ptolemaic era, second century BC, with the following instructions warning the ancient Egyptian bureaucracy, as it were, against writing 47 volumes of putative Pentagon Papers. "To the King one should not write long reports nor deal with all kinds of problems. Instead one should report only what is necessary and urgent in as concise a form as possible." For bureaucrats, such testimony to the enduring dilemmas of the bureaucracy through the centuries may be reassuring.

In the field of actual warfare, a new century has often conquered not only through unconventional weapons but also through organizational innovations. In ancient Greece and at the end of the Middle Ages the knights were vanquished by the phalanx, which in later days succumbed to more mobile units, even simple guerrillas. By contrast, in the political and economic fields, innovations often succumb to inertia. How many other revolutionaries and reactionaries alike have come to appreciate the poignancy of Andres Bello's summary of the Latin American wars of independence: "In the wars of independence against Spain, there were no victors and no vanquished. The Spanish constancy defeated itself."

Twentieth-century politics and economics are a mosaic of all the centuries when it comes to motivation, organization, attitudinal affinities and capacity for cooperation. One may ask of a foreign head of state, of a diplomatic colleague passing in the hall, or of their wives at the dinner table: Which century are you in? Whether we and our contemporaries are actually living in the same century, are willing to work in the same century, and are coming to grips with the same century, will largely determine whose century our successors will say this has been. Yet often, these days, only a wizard can conjure up what is present, what future, what past, and what is merely daubed here and there with a twentieth century brush.

Today, for example, if we ask what most of the world's three and one-half billion people are doing, it would be true to say: Most of them live in Asia, are poor, are ill-fed, are sick, are illiterate, lack freedom, are proud, fear war, and feel neutral in many contests which others think vital. But most people in the world could have been described that way a century ago or ten centuries ago. In a sense, the century never belongs to the people who live in it. The City of the Rich and the City of the Poor was an Aristotelian distinction, not an invention of the hapless Lin Piao.

The receptivities and tolerations of both governments and people have to be mutually calculated and recalculated, never in entirely satisfactory ways. The rates and magnitudes of current United States assistance to Latin America, for instance, run head-long into nineteenth-century banking systems, eighteenth-century commercial codes, corporate arrangements based on familial patterns of ownership, and investment attitudes of a low-risk, high-yield, short-term nature like mercantilist seventeenth-century England. Sometimes we find ourselves trying to infuse contemporary notions of credit, fertilizers, cooperatives and storage systems into an ancient Indian culture predating the arrival of Columbus in America.

The conflicting elements of many centuries bounce off the politics and economics of the present. Thus we have all had lessons in accommodating ourselves to certain unwelcome facts of life. What looks like leadership to some may look like exploitation to others; what here looks like help, may there be seen as interference; what to the provider is assistance, may to the receiver be intervention. On the Texas border, we may call it the Rio Grande, they the Rio Bravo. We may consider ourselves a Good Neighbor, they may think of us as the "Colossus of the North." As the Dictator Porfirio Diaz used to say, "Poor Mexico! So far from God, so close to the United States."

The culture problem is a human problem, not a scientific one, and it is the child and victim of many centuries. Hence, half-seriously, one can say that the twentieth century is currently made up of fourteenth-century farmers, fifteenth-century theologians, sixteenth-century politicians, seventeeth-century economists, eighteenth-century bureaucrats, nineteenth century generals and twenty-first-century scientists.

Some people—perhaps some centuries—have a much greater facility than others for self-deception, wishful thinking and false expectations. Thus one has to consider whether a strenuous effort to clarify every element in the picture really helps or hinders mutual objectives. One may legitimately ask which combination of the centuries in which societies provides the most forward motion on basic problems at a given time. Therefore it is also true that many of those most vociferous in laying claim to the century operate on a base which is only faintly in touch with the verbal gloss they employ. In a sense, every would-be claimant presses his claims to the century under false pretensions.

Many of the world's contemporary politicians do so doubly, for neither their cause nor they themselves are clearly contemporary. Just as the current century contains residual elements of all preceding centuries rolled into it, so we may also consider, as John Morley did in his "Life of Gladstone," that "Every man of us has all the centuries in *him*." Many of the leaders are born in the wrong century, serve the wrong governments and talk the wrong tongues. Many are perhaps only dimly aware of how much more at home they would have been abroad at some earlier point of history. Some of them, in unexpected places far beyond Europe, are perfectly cast for leading roles in latter-day analogues to the seizure of Silesia or the partitions of Poland. Others would gladly proclaim some new Pragmatic Sanctions of their own. Still others would happily grace a new Congress of Vienna, yearning even this late in history for another world restored.

But if the question—Which Century?—still vexes analysts and actors alike, how much more insidious, elusive and provocative is the question evolving from it: Whose Century will it—should it—be?

II. A CENTURY OF GOVERNMENTS?

Whose century? Three and one-half billion people implicitly ask that question. Suspended over them all, asking the same question, are some 145 governments. These governments provide many contrasts in the manner of their arrival and their prospects for stability.

They vary widely in their approaches to poverty, pollution and the population explosion; in their reaction to prejudice, racism and crime; in their efforts for more health, housing and human dignity.

They differ dramatically in their commitment to democracy, social justice, nonviolence, economic growth, law and order, and peace.

They show marked contrasts in their enthusiasm for, or resistance to, demands for equal access to wealth—or even to the propriety of asking how 100 percent of the world's people can get at 100 percent of the world's resources.

These governments have varying stakes in East-West tensions; in the Sino-Soviet rift; in the United Nations; in NATO and the Warsaw Pact; in the OAS and OAU; in SALT and disarmament; in trade and aid; in frequency allocation and weather modification.

They differ in their dependence on, or independence from, the United States and the Soviet Union, although most are deeply affected by what the superpowers do or fail to do.

They form shifting constellations of agreement and disagreement on issues full of consequences for others. They all want to change the policies of others toward themselves, often in different and inconsistent ways.

Each government is nervous about the absence of fixed points in the world horizon to which many of them were formerly accustomed. Each worries about a possible decline in the interest and attention of others. Each differs from the others in the degree to

which it desires to be respected, feared or admired. Each probably overestimates its own role. Each government, even the autocracies, is concerned with domestic demands, and each wants to interest others in its domestic survivability. Each must consider how to mesh domestic requirements with the fast pace of world affairs. Each must grapple with priorities. Each must decide whether to go for long-term or short-term results. Who will initiate what? Who will gamble between the penalties and rewards of inaction? Each is in a box, but some are in bigger boxes than others.

Many governments are uncertain representatives of the viewpoints their people hold. Many of their people are increasingly uncertain about what their governments really think. Many governments include bureaucracies which are privately anxious about the reliability of their political leaders. Many of the leaders lack admiration for the bureaucracies which they theoretically control. Many fail to distinguish between declaratory policies and actual policies. Many are tempted toward claims and commitments beyond their capacity. Many fail to recognize the policy points of no return.

Some governments are in doubt which rift to heal, or which détente to encourage. Some are engaged in making progress through sham. Some are adept at the techniques of divesting responsibilities. Some will find the complexities so overwhelming that they will simply be overcome with indecision. Some will be the century's "laughing heirs."

Most governments will pursue several policies at once. Most will be looking for points of identification, appeal, connection and mutually acceptable involvement. Most will consider that they have a mandate for change, but they are increasingly aware that patterns are different, and that the world is moving Left and Right at the same time. Most will crave frequent consultation and the reassurance that comes from easy access.

All governments govern countries where certain important public questions have traditionally been badly posed. All are worried about the East-West division between the communist and noncommunist worlds. All are caught up in the North-South racial division between the colored and the less-colored people of the world. All must grapple with the North-South economic division between the low-income nations and the so-called developed ones. All would prefer to line up with the ascending rather than the descending forces in history. Yet all, whatever their doctrines, probably believe that nothing in history is really inevitable until after it has happened.

All are betting on different answers to the question: Whose Century?

The answer to the question remains elusive, whether viewed from the perspective of peoples or governments. Thus governments may think of themselves as sovereign and equal, but each government has long understood that some governments are more sovereign and equal than others. Governments exert disproportionate claims to the century. They also enhance or frustrate their people's claims to the century in disproportionate ways. This much has always been true. But I should like to suggest that we are now witnessing another, more grossly disproportionate, development which will have profound and unpredictable consequences for the character of the century. I have in mind the steady reduction of the old-style role of government in the Western world without a symmetrical or compensatory development elsewhere.

III. A LESS GOVERNMENTAL WEST AND THE REST

When Adam and Eve left the Garden, Eve reportedly turned to her husband and said, "Adam, we live in an age of transition." Today in the West we may be leaving the familiar garden of intergovernmental relations where by definition only a hundred-or-so flowers can bloom. It would be too much to call this familiar intergovernmental world a paradise like Eden, for diplomats or for anyone else. But for over a hundred years we in the West have used its forms, imposed them on others, organized the world's commerce and investment around them, and built our international institutions of war and peace upon them.

Today this familiar intergovernmental world is crumbling, beginning in the West where it itself began. Here, breaking through the intergovernmental crust of what we used to call international relations are pluralist manifestations of many assertive kinds. Together they are reducing, relatively speaking, the roles of Western governments. And they are also making life more difficult for many international institutions whose organization and well-being have, until now, been predicated on the reliability of certain Western governmental roles. These new degovernmentalizing manifestations are by no means coherent or consistent. They often appear Janus-faced, hydra-headed or omnidirectional. They themselves are engulfed in adversary cultures. They involve differentiating and integrating tendencies alike.

Thus the contemporary flight from foreign policy may take on various forms of rejection and reassertion, and become neo-isolationist and neo-transnational as well. For example, the significant domestic opposition to unpopular foreign policies that has been occurring in Britain over entry into the Common Market and in the United States over our fiasco in Vietnam can spill over into either a frustrated, localized retrenchment or into a new frontier-crossing politics of the Left. The *Weltschmerz* of the intellectual insurrection and the exuberance of the youth revolt can too. At another level, the growth of the multinational corporation can evoke a transnational economics on the Right, as well as provoke a reaction opposing it on both the Right and the Left.

The governments of Western democracies are discovering that their people are deficient in the deference that governments used to think was their due. Governments devoid of credibility confront citizens devoid of patriotism. Patriotism! It is not only not enough any more. It is not only the last refuge of scoundrels. To today's avant-garde, scoundrels are the only patriots around—surely a thin base of reliable support for Western governments cumulatively under siege. These governments preside with deteriorating effectiveness over societies which at one and the same time threaten to become too proud to fight, too sophisticated to agree, too democratic to be directed, too assertive to acquiesce, too liberal to be led, too complicated to be consistent, and too élitist to accept majority rule.

Democratic societies can, of course, burst their own societal bounds of toleration. Deeply felt oppositionist tendencies, for instance, while less than sufficient to capture the state, may prove more than sufficient to immobilize it. *E pluribus unum*—one out of many—can depreciate at least as fast as the American penny which carries that maxim on its reverse face. At minimum, today's democratic, affluent societies in the West face explosive new struggles for identity and coherence as the individuals and groups within and between them sort out their contemporary purposes and priorities. Their diverse publics are diversely interested. Old forms have become demonstrably less useful as practical guides for significant personal behavior. Old forums may likewise become perceptibly less useful as the relevant terrain for future decision-making.

The most striking fact about the resulting new relationships is that they are less and less international in the old intergovernmental sense. Western governments and the intergovernmental institutions extrapolated from them are by no means the exclusive or even the centrally active elements. Instead, as often as not, these elements are extranational and nongovernmental in character. Compared to what has gone on before, the new forces now sweeping across Western life are marked by the bypassing of government by ever larger portions of the population, and by the explicit rejection of government by many. Whether governments—including some governmentally based international organizations—are ostracized or simply ignored, the feeling is inescapable that the proportionate importance of governments in the daily life of the West is dwindling. Nationally and transnationally, their pivotal position is eroding. Certainly Western governments do in fact preside less and less effectively over the burgeoning pluralisms emitted by Western societies.

In a sense, of course, the depolarization of world politics has been occurring simultaneously with the polarization of domestic politics in the West. The latter process, often indistinguishable from the degovernmentalizing phenomenon previously mentioned, is bound to cut unevenly across the competitive claims to the century, be they popular or governmental or both. For the time being basic forces are loose in the West which are precipitating a new asymmetry in world affairs. Western societies are internalizing much of their combative energy and disputatiousness, nongovernmental and antigovernmental sentiments are popular, and the Western governmental component itself is diminishing in the totality of transnational relationships.

The world of formal intergovernmental relations will continue, of course, even among Western capitals, if only because no one can think what ceremonial life would be like without it. Yet the result of all this internal combustion will be a less governmental West. The affluent democracies will be living in a halfway house to transnationalism.

But it will be a transnationalism putting the West out of phase with the rest. No comparable degovernmentalizing tendencies will have taken hold in the authoritarian governments of the ideological East or the nation-building governments of the developing South. Metternich, a European from the Rhineland, felt that the Hapsburg Empire did not belong to Europe. "Asia," he said, "begins at the Landstrasse," the road out of Vienna to the East. Today, in a notably different setting and with momentous new forces at work, one can visualize a future where the residual Metternichian world of intergovernmental relations will itself begin at the Landstrasse, with networks of governmental and bureaucratic traditionalism spreading out from it for hundreds and thousands of miles over the lands to the East and the South.

Peoples and states in the East and South may indeed have little else in common except for the vital similarity that their governments still remain their ultimate representatives externally. In dealing with Western governments, however, they will be dealing with only one of the components in the Western picture, by no means the exclusive or even "responsible" agent for the society they are said to represent.

For in the West the virtues and defects of pluralist democracy will be thriving in unpredictable profusion, puncturing pretentiousness and splintering sovereignties. An old contrast is likely to spring up again between that part of the world where, in certain fundamentals, governments immobilize their people, and that part of the world where, in certain fundamentals, the people immobilize their governments.

Eventually, of course, the decline of governments in the West may erode the stability and effect the continuity of government roles in the East and South. But in the pe-

riod just ahead, these phenomena will continue historically out of phase. The unevenness of the change will amplify the contrasting vibrations from and between the new-style transnational relations in the West and the older-style intergovernmental relations of the East and South.

For the time being these tendencies will remain asymmetrical and will introduce unbalancing, even destabilizing, elements in world economics and politics. The strategic implications could be unsettling if this dichotomy applies, as it would seem to do, to America in her declining superpower role on the one side, and to the rising or remaining power roles of China, Japan and the Soviet Union on the other.

On a more universal scale, the totality of international relations will also partake of this house-divided phenomenon. The old mythologies of state sovereignty will be less convincing than ever before. International institutions, already suffering from severe constituency imbalances of sovereign size, wealth, power and weight, will have to begin to come to terms with the newly destabilizing effects of factions flourishing in the West.

Whatever else it may signify, the transnational phenomenon in the West, simply by deemphasizing governments, will be pioneering and evocative. It will carry large and unpredictable implications for the whole world: for politics and personalities, for economics and cultures, for war and peace. It adds new and disturbing dimensions to the unanswered question: Whose Century?

When Metternich confronted his imperial master with a troublesome proposition, Francis I would postpone a decision by responding: "Darüber muss man schlafen." Indeed, "Let's sleep on it" eventually became the Emperor's motto for all questions of state. Whose Century was difficult enough to discern when we were on the threshold of transnational politics. Today with its arrival, we have an occasion portentous enough to require deep and serious thought. We too will have to sleep on it before coming to any hasty conclusions. Diplomats and other officials in the West, however, will find when they awake that the forms no longer fit, that the rules no longer work, that the old government-to-government cake of custom has been broken, and that earlier notions of how societies are represented—central questions of Who, Whom?—must be fundamentally revised.

THE FEDERAL ELECTION CAMPAIGN ACT

Mr. FANNIN. Mr. President, one of the worst laws enacted by this Congress becomes effective today: the Federal Election Campaign Act.

This was advertised as legislation to clean up some questionable practices in campaign finance. Instead of meeting the needs of campaign reform, this legislation simply creates even more problems.

It certainly does nothing to halt the most flagrant campaign abuse in America today, the illegal use of union dues and resources in election campaigns.

Mr. President, I was criticized for voting against this bill, but there is growing recognition of the fact that this legislation has serious deficiencies. In addition to the failure to control massive union contributions, the bill raises some serious constitutional questions regarding freedom of speech and freedom of political activity. It is my opinion that this bill may well be unenforceable. Too many questions are left unanswered.

One perceptive article on this bill appeared this week in the Wall Street Journal. It was written by Michael Gartner, a lawyer who is an editor of the newspaper.

Mr. President, I ask unanimous consent that this article be reprinted in the RECORD.

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

CAMPAIGN FINANCING: A DUBIOUS LAW

(By Michael Gartner)

Assume you have amassed a modest fortune and you now want to try something new. You decide to run for Congress. You and your family agree to spend $50,000 of that fortune to finance your campaign.

As of Friday, that expenditure will be illegal.

Assume you firmly believe in a candidate or a cause, so much so that you would like to buy a full-page ad in The Los Angeles Times to support that candidate or that cause.

As of Friday, that will be sometimes impossible, always difficult.

Assume you are a professor who has built up a rapport with your liberal young students. Really, though, you are a closet conservative, and you would like to give a quiet $100 to the committee to re-elect Richard Nixon. You don't want the students to find out, of course.

As of Friday, that will be impossible.

Assume, finally, that you own a newspaper or a television station and you're looking forward to the quadrennial windfall from political advertisers. Demand is high this year—after all, there are more Democratic candidates than you can count on your fingers—so you jack up the rates a little.

As of Friday, you can't.

On Friday, the Federal Election Campaign Act goes into effect. It is known more widely as the campaign spending bill, or S. 382, and it restricts all of the activities listed above. It is a widely praised law designed to prevent people from buying elections, to put the spotlight on "fat cats" and to ensure that in the future a man needn't be rich to run for office.

It is also a law that is dubious both logically and legally, a law that will work to keep in office the people who wrote it and to penalize the very people it alleges to protect.

THE LAW'S LOGIC

Consider first the logic. The bill was proposed because there has been a great hue and cry about the millions of dollars that are spent each election year. There has been increasing alarm especially about the millions that have been poured into television advertising by the so-called media candidates. Such broadcast expenditures in federal elections rose to more than $50 million in 1970 from just under $10 million in 1956.

And so the new law limits each candidate to spending 10 cents per potential voter in each election "for the use of communications media." No more than six of those cents can be spent on television.

That might be noble, except for one fact. "Money . . . cannot assure electoral victory," Howard R. Penniman, a professor of government at Georgetown University and an authority on political parties and elections, writes in "Campaign Finances," an 83-page paper issued recently by the American Enterprise Institute for Public Policy Research in Washington. "The many studies of television and campaigns provide little evidence of its great impact on the outcome of general elections."

"We find campaign broadcast expenditures to be only moderately significant in determining election outcomes," Paul A. Dawson and James E. Zinser, assistant professors at Oberlin College, wrote in the Fall 1971 issue of Public Opinion Quarterly.

Some recent data: In the Florida primary, Mayor John V. Lindsay of New York is said to have spent about $170,000 for broadcast time; he received 7% of the vote. Sen. Edmund S. Muskie of Maine is said to have spent about $160,000; he received 9% of the vote. Sen. Hubert H. Humphrey of Minnesota is believed to have spent about $60,000 on television time and $15,000 on radio; his share of the vote was 18%. And Gov. George C. Wallace of Alabama is said to have spent about the same amount as Mr. Humphrey. Gov. Wallace got 42% of the vote.

Gov. Wallace and Sen. Humphrey between them received 60% of the vote—and spent 20% of the money.

In New Hampshire, Sen. Muskie spent about $65,000 in the media and garnered 47.8% of the vote. Sen. George McGovern of South Dakota spent about the same and finished second with 37.6%. But a committee working on behalf of Rep. Wilbur D. Mills of Arkansas spent more than $80,000 on media advertising, mostly on television, and the Congressman received only 4.1% of the vote. Mayor Sam Yorty of Los Angeles spent only $15,000—yet received 6.1% of the vote, some 1,700 more votes than Mr. Mills tallied.

So the Federal Election Campaign Act appears to be an unneeded law. It is also a bad law, in the view of legal scholars. "The final bill is flatly unconstitutional," asserts Ralph K. Winter, Jr., a professor of law at Yale who is a specialist in constitutional law. And Yale Professor Thomas I. Emerson, an authority on the First Amendment, says several aspects of the law "raise serious constitutional questions and probably violate the First Amendment."

Both men complain that the law, in effect, requires a person to register his political activity with the government. Which it does. It requires that each candidate disclose the source of all his funds. It might be nice to know who those fat cats are—though Georgetown's Prof. Penniman says that "fat cats are less important in affecting the outcomes of elections than is sometimes assumed by proponents of more regulation"—but is it right that every man should know if his neighbor gives $100 to Gov. Wallace or to Sen. Eugene McCarthy?

This is "clearly a deterrent to political activity," argues Prof. Winter. "It raises precisely the same issue as the press not wanting to reveal news sources." (But Fred W. Friendly, the former head of CBS News who now is at the Columbia University journalism school, sees no problem in the disclosure requirements. "I'd rather know what the AFL–CIO and the big defense contractors are giving than I would like to protect the small giver. For every college professor you protect, you protect in a much more serious way a union or defense contractor that shouldn't have that protection."

Besides requiring financial disclosure, the law also limits personal expression by decreeing that a citizen cannot buy an ad to support a candidate unless that candidate approves of the ad. Since the cost of the ad is counted in that 10-cents-per-voter calculation, legislators reasoned that the candidate should have a veto power over such advertising. But what if New York philanthropist Stewart Mott, say, wants to take out an ad supporting Sen. McGovern? And what if Sen. McGovern, for some reason, doesn't want Stewart Mott's support? He can veto the ad, thus silencing Mr. Mott's political views.

"This gives a candidate veto over an individual's political activity," says Prof. Winter, "and that strikes me as flatly unconstitutional." "It does," says the more cautious Prof. Emerson, "raise very serious constitutional questions."

("Damn straight it's a restraint on my freedom of expression," says young Mr. Mott. And he raises an interesting question. "If I want to say nasty things about a given can-

didate in an ad, and there are four in the race, do I have to seek permission from the other three? Do they have to divide up my cost of the ad in their spending limits?")

The new law also limits the freedom of expression of the candidates themselves. It decrees: "No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with nomination for election, or election, to federal office in excess of $50,000 in the case of a candidate for . . . President or Vice President, $35,000 in the case of a candidate for the office of Senator, or $25,000 in the case of a candidate for the office of Representative to the Congress."

"There are First Amendment doubts about that, also," says Mr. Emerson. "It is unconstitutional," says Mr. Winter.

Constitutional authorities are troubled less—and newspapermen are troubled more—by a provision in the new law that rules that broadcasters and newspapers and magazines may charge political advertisers no more than the lowest charges made to other advertisers for comparable time or space.

Governmental infringement on broadcasters' First Amendment rights has become routine by now—the banning of cigaret ads, the attempt to subpoena unused film clips, the pressure to let government men grind their axes on the air—but newspapers had pretty much avoided such harassment. But no longer.

CONTROLLING NEWSPAPERS

"There has never been anything approaching the control of the newspapers" that is written into the new act, Prof. Emerson states. He believes that it presents no First Amendment problems, however, because it is addressed to the commercial aspects of newspapers—like antitrust laws. He concedes, however, that "I can see how you could work up an argument to the contrary."

Indeed you can, says Norman E. Isaacs, editor in residence at the Columbia journalism school, former executive editor of the Louisville Courier-Journal and former president of the American Society of Newspaper Editors. "I wince over the government getting into the business of stipulating what a newspaper shall charge," he says. "The next step could be that the government will make you give space away. I always worry about the government. I suspect it is a violation of the First Amendment." Mr. Isaacs says he believes in the principle that newspapers should not gouge politicians on ad rates, but he doesn't believe the principle should be enforced by law.

(If the bill is unconstitutional as related to newspapers and broadcasters, so too, is it economically damaging. "This will put several broadcasters in Alaska in the red," says an aide to Sen. Ted Stevens, who was a lawyer for broadcasters before Alaskans sent him to the Senate.)

So in attempting to enforce that 10-cents-per-voter limit, the act is made up of several seemingly unconstitutional provisos. But is the limit on campaign expenditures in itself unconstitutional? Prof. Winter, writing in the American Enterprise Institute's paper, declares:

"A limit on what a candidate may spend is a limit on his political speech as well as on the political speech of those who can no longer effectively contribute money to his campaign. In all of the debate surrounding the First Amendment, one point is agreed upon by everyone: No matter what else the rights of free speech and association do, they protect explicitly political activity. But limitations on campaign spending and contributing expressly set a maximum on the political activity in which persons may engage."

He goes on: "A law forbidding someone from contributing to a candidate's campaign or restricting the use to which the candidate may put the money cannot be distinguished from a law forbidding speeches of over 10 minutes in public parks. . . . The First Amendment prohibits the setting of a legal maximum on the political activity in which an individual may engage . . . . Sound trucks which keep people awake at 4 a.m. by broadcasting political messages can be stopped, not because of a governmental interest in preventing the message but because of the public's interest in sleeping. No such nonpolitical or nonspeech interest exists in the case of legislation regulating campaign expenditures or contributions."

And two Harvard law students, writing in the January 1972 issue of the "Harvard Civil Rights Civil Liberties Law Review," conclude: "A ceiling on individual political spending is a serious infringement upon traditional concepts of free expression. Individual spending should be curtailed only if it poses a direct and substantial danger to the political process which cannot be effectively controlled by alternative measures."

SOME "REDEEMING VIRTUES"

But this seemingly unconstitutional law does have some redeeming virtues—if you're an incumbent legislator. By putting all kinds of restrictions on candidates, the law clearly works to the advantage of people who already are in office. Says Prof. Penniman of Georgetown:

"The setting of uniform limits on campaign expenditures for incumbents and challengers fails to take into account the subsidization of the incumbent (the franking privilege, free phone calls, etc.), and the more severe the limit, the greater the handicap placed on the challenger. Money for campaigning does not ensure a real contest, but tight limitations on funds may distort the democratic process by reducing the opportunity for a serious challenge of the entrenched officeholder."

Prof. Penniman makes one other point worth noting. "The best estimates tell us that campaign spending for all the thousands of offices up for decision in 1970 was perhaps $300 million," he says. "It was not much more than the $275 million that Procter & Gamble spent to advertise its products that year."

PRICKING THOSE ECONOMIC MYTHS

Mr. BENNETT. Mr. President, several economic myths are currently being floated by the flock of Democratic presidential hopefuls and others which I believe deserve to be pricked by the sharp point of facts.

Myth No. 1: Farmers are responsible for the recent rise in food prices. Not true. Retail food prices rose 43 percent during the past two decades, but farm prices rose only 6 percent.

The Giant Food chain received much publicity recently when its consumer adviser, Esther Peterson, took full-page ads urging housewives not to buy meat and implying that the strengthening of farm beef prices was to blame for higher over-the-counter prices. Mrs. Peterson, who formerly was consumer adviser to President Johnson, neglected to point out that Giant Food and other retailers could actually purchase beef carcasses cheaper in March of this year than in August of last year, when the price freeze was imposed. Thus, farmers are wrongly being blamed for the high prices charged by the food chains.

Myth No. 2: Current economic indicators show that the Nixon administration's program is in trouble. Not true at all. Although other evidence could be presented to illustrate that the Nation's economy is responding very favorably to the controls now in force, one of the best evidences is that even neutral observers agree that things look good, indeed. Columnist Joseph Kraft, for example, who is hardly known as a White House yesman, wrote in a recent article that "most of the usual indicators are positive."

Kraft noted:

Gross National Product and business investment are both up as predicted in the Administration's forecasts. Housing starts, at an annual average of 2.6 million are running way ahead of the projected figure of 2.2 million starts.

Myth No. 3: The revamped Pay Board will be a tool of business, since most of its labor members took a walk. Mr. Kraft again answers this notion best:

That (the restructuring of the board) leaves the Pay Board to a small core of public members who are dedicated hardliners when it comes to holding the line against inflation. Far from being a self-destruct mechanism, the Pay Board has now become an instrument with staying power.

Myth No. 4: The Nation's economy will be the Democrats' best weapon in November. Do not bet on it.

Mr. President, I ask unanimous consent that Mr. Kraft's column entitled "Economy on Target," published in the Washington Post of March 30, be printed in the RECORD.

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

ECONOMY ON TARGET

(By Joseph Kraft)

You can now add Ingrid Bergman to the list of economic indicators pointing toward good times for President Nixon. She has been playing in Washington, and was invited by George Shultz, the director of the Office of Management and Budget, to visit the White House.

When the plan fell through, Mr. Shultz registered mild disappointment. And when Mr. Shultz frets about Ingrid Bergman that means he feels free to look up a little from the black pit of worry about inflation and unemployment.

On the inflationary side, the latest development—the withdrawal of the labor members from the Pay Board—is in fact a blessing in disguise. In the past, the Pay Board has been lamentably weak because the labor and business members acted in covert alliance to jack up wages and prices.

With the withdrawal of AFL–CIO President George Meany and three other labor members, President Nixon has also been able to sack their hidden partners among the business members. That leaves the Pay Board to a small core of public members who are dedicated hardliners when it comes to holding the line against inflation. Far from being a self-destruct mechanism, the Pay Board has now become an instrument with staying power.

One other recent difficulty seems also to have been exaggerated. Consumer prices did rise by an annual average of 6 per cent last month the highest increase since the jump last June which was a central factor in forcing the administration to adopt its new economic policy.

But the cause of the rise was a 24 per cent rise in food prices. The non-food price index actually declined somewhat. And, as it happens, food is one of the items most subject to control.

Tough talk about higher prices, for one thing, can put the grocery chains and processors on the defensive. The President has opened the way with the attack he made on

the "middlemen" in the food business at his last news conference. Now Secretary of the Treasury John Connally has jumped into the battle with all his formidable energies and powers of persuasion.

Moreover, the administration disposes of indirect means for forcing down food prices. The import quotas which hold up prices of meat, sugar and dairy products could be relaxed.

Lastly, there is the possibility of direct controls. As Secretary Connally has indicated, a flexible system linking higher retail prices directly with the far more modest increases being paid to the farmer could be instituted. If necessary, a total freeze on food prices could be applied.

As to economic recovery, most of the usual indicators are positive. Gross National Product and business investment are both up as predicted in the administration's forecasts. Housing starts, at an annual average of 2.6 million, are running way ahead of the projected figure of 2.2 million starts.

It is true that there was a record trade deficit for the first quarter. But the dock strike figured importantly in that showing, and some of the deficit will be offset by returns on investment and other so-called invisible earnings. Moreover, since payment of gold against dollars was suspended when the New Economic Policy was announced, this country is now powerfully insulated against the claims of foreign creditors.

It is also true that retail sales have not done well and that money being pumped into the economy through government purchase is slightly behind schedule. But an off-set to these short-falls is emerging.

Poor understanding of the latest regulations has caused tax-payers to overwithhold at a terrific rate—$8 billion annually, according to the Treasury. Administration officials are now considering a variety of means for inducing the taxpayers to withhold at a more moderate rate. So if necessary, the Administration has available an easy way for giving the economy a big shot in the arm.

What all this means is that the President is in good position to meet the economic targets for this year. These targets are modest and include acceptance of at least 5 per cent unemployment. Still, the economy will probably not be in dire straits at election time, and this time the Democrats will almost certainly be denied what is usually their best weapon against a Republic President.

HELLER PUSHES FOR REUSS HALF MILLION JOB PLAN

Mr. PROXMIRE. Mr. President, today's New York Times contains an excellent letter by Walter Heller, former Chairman of the Council of Economic Advisers, calling on Congress to enact the Reuss jobs-now bill.

Mr. Heller makes a devastating case for getting on with the job of providing more jobs and now.

Few write with Mr. Heller's eloquence, and few of us in Congress have the imagination and drive of HENRY REUSS, who incidentally is the able Representative from the Fifth Congressional District of my own State of Wisconsin.

Mr. President, I cannot resist, in this great political body, quoting the last—and most appropriate—paragraph of the Heller article:

> But education and training—as well as unemployment compensation, income maintenance, and work incentives for the unemployed—all lose their point unless there are decent jobs for them at the end of the line. It was Calvin Coolidge who made the profound observation that "for a man to have a job, someone has to hire him." He had something there. And "Jobs Now" has something here.

I ask unanimous consent that the Heller article be printed in the RECORD.

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

NEEDED NOW: "JOBS NOW"

(By Walter W. Heller)

MINNEAPOLIS.—Given the continued intolerably high unemployment and slack in the economy under Mr. Nixon's policies, the need for the "Jobs Now" program—Congressman Reuss' proposal for 500,000 public service jobs—becomes more urgent with each passing day. That need has at least five facets.

First, the need for greater economic stimulus: The economy is running $80-billion below its full-employment potential. So even if the Nixon forecast of a 1972 G.N.P. of $1,145 billion were realized, output would still fall $60 billion short of our productive capacity. Under these circumstances, the increased authorization proposed by the "Jobs Now" bill (H.R. 12011)—to $2 billion for fiscal 1972 and $4 billion for fiscal 1973 (from the $1 billion for 1972 and $1.25 billion for 1973 now authorized under the Emergency Employment Act of 1971)—would be a modest but welcome tonic for an economy that still has tired blood.

Second, the need to meet our biggest single economic problem, unemployment, head-on: The public-service jobs bill recognizes that the shortest distance between two economic points is a straight line, that if we want to use Federal money to create jobs, the quickest and least expensive way to do it is to fund and fill jobs that are waiting to be done. Funding and filling 500,000 public service jobs goes straight to the heart of the unemployment problem.

Third, the need to tailor jobs to the changing structure of the jobless: The "Jobs Now" program zeroes in on the less skilled, less experienced jobless—the teen-aged, female, growing proportion of the unemployed. Viewing the rising tide of youth and women in the labor force, some observers (including high officials of the Nixon Administration) have concluded that the 4 per cent unemployment goal is "a myth," that "6 per cent is not critical" because unemployment of teen-agers and women does not have a high hardship quotient anyway and that we have to settle for a more modest unemployment target like 5 per cent in order to contain inflation.

Granted, it's tougher to get to 4 per cent than it used to be. But that's no excuse for ignoring the social costs and tensions that go with 10 per cent unemployment rates for blacks, 17 per cent for teen-agers, and over 30 per cent for black teen-agers. Tossing in the sponge and taking a "you-can't-get-there-from-here" attitude, as the White House seems to be doing, is precisely the wrong response.

Fourth, the associated need to do a better job of reconciling full employment with reasonable price stability: If we try to solve the unemployment problem solely through general fiscal and monetary stimulus, the resulting demand pressure will create shortages of skilled workers, generate bottlenecks, and boost prices long before its blessings reach the less skilled and least experienced members of the labor force. To employ them without creating new demand-pull pressures calls for carefully targeted measures like "Job Now" that require, not $2 or $3 of spending, but only $1 (plus administrative expenses) to create $1 of unskilled job opportunity.

Fifth, the need to create productive, not make-work jobs: Myriad public service jobs—in health care, education, public safety, pollution control, recreation, sanitation, urban maintenance and renewal—are crying to be done. But hard-pressed state-local treasuries—depleted by recession—simply cannot cope. These service jobs, being neither supported by expanding revenue sources like the Federal income tax or ear-marked taxes like payroll and gas taxes, nor saleable in the market place like private goods, bring up the rear of the budgetary queue.

The Nixon Administration is fond of scornful references to "dead-end W.P.A. jobs." This reflects not only a woeful ignorance of history but a distressing lack of understanding of the nature and needs of the unemployed. For although youth, women, and minorities do make up a larger part of the jobless today than ten or fifteen years ago, their average level of education and training is significantly higher. As Otto Eckstein has shown, the proportion of the 18–64 age group with education of twelve years or more rose from 48 per cent in 1957 to 57 per cent in 1964 and 68 per cent in 1971. The number of individuals in work and training programs rose from 135,000 in 1964 to over a million in 1969.

But education and training—as well as unemployment compensation, income maintenance, and work incentives for the unemployed—all lose their point unless there are decent jobs for them at the end of the line. It was Calvin Coolidge who made the profound observation that "for a man to have a job, someone has to hire him." He had something there. And "Jobs Now" has something here.

DEATH OF SALVATORE CAMELIO

Mr. BROOKE. Mr. President, last week the Commonwealth of Massachusetts suffered a great loss in the death of Salvatore Camelio, president of the Massachusetts State Labor Council, AFL–CIO.

I had the privilege of knowing the highly respected Salvatore Camelio and his wonderful family for many years. His distinguished son, Augustus Camelio, was an assistant attorney general when I served as Massachusetts Attorney General.

Sal Camelio, as he was affectionately known, immigrated from his native Italy as a child. He began his career as a rubber worker, and served as first president of the Boston Local 25 of the United Rubber Workers. He was active in the founding of the CIO, served on the Wage-Labor Board in World War II, and contributed to the merger of the AFL and CIO in 1958. He later served as State president of the AFL–CIO from 1964 until his death on Thursday of last week.

Sal had many interests. While most of his effort was devoted to improved labor conditions and benefits for the workers of Massachusetts, he was also concerned with health, education, urban problems, and pollution control. He was active for many years in raising funds for the Muscular Distrophy Foundation, and received several awards from the association for his services. He served on the Massachusetts Rate Setting Commission which investigated hospital charges and made recommendations for lower hospital costs. And he spent many active years in programs designed to benefit the elderly.

It is typical of Sal Camelio that on the last day of his life he was at the State House in Boston, fighting against a measure which he felt would be detrimental to unemployed workers in Massachusetts.

Mr. President, Salvatore Camelio devoted 40 years of his life to the labor movement. His work, and his enthusiasm for it, never ended. He left a lasting and creating mark on the labor movement. Millions of men and women benefited greatly from his tireless efforts.

To his courageous wife and family, and his multitude of friends, I extend my deepest sympathy.

INVASION OF SOUTH VIETNAM

Mr. FANNIN. Mr. President, the invasion of South Vietnam by Hanoi at last destroys any pretense that the war in Southeast Asia is anything more than a naked attempt by a Communist power to destroy a free nation.

In 1968, understandings were reached which led to a cessation of the bombing of the North in return for North Vietnam's recognition of, and respect for, the demilitarized zone provided by the Geneva Conference of 1954. Hanoi has broken its agreement in the effort to break South Vietnam's growing ability to defend its own freedom. In order to help nurture and protect South Vietnam's strength, and in order to protect the withdrawal of American forces from Vietnam, President Nixon has resumed the bombing of the North. Our planes are attacking those elements which directly support the invasion. I believe the bombing will continue as long as the invasion continues. All the North has to do to end the bombing is to leave her neighbor alone. That seems fairly elementary to me.

It seems quite unreasonable to some of the Democratic candidates. Some of the same people first involved in placing South Vietnam's freedom in jeopardy when their party was in power back in the early 1960's, now want to sacrifice that freedom entirely in their efforts to get back in power in the 1970's.

Let it be clear that the issue is not whether to end this war. The President did not start it, and he certainly has worked successfully to end it. The issue is how to end it—in honor or in shame. When we are so close to leaving the people of South Vietnam with the chance to survive, I do not think we need Democratic candidates going about trying to destroy that chance.

PROPERTY TAX—WHAT TO DO?

Mr. GURNEY. Mr. President, over the years, the senior Senator from Kansas (Mr. PEARSON) has worked diligently to provide a retirement of dignity and purpose to the Nation's older Americans. Recognition of his achievement in this area is becoming increasingly apparent, exemplified by his participation in last December's White House Conference on Aging.

Of great concern to Senator PEARSON and me is the heavy financial burden under which increasing numbers of senior citizens are being forced to live. Caught in this unfortunate situation are those older Americans who, having saved all their lives for a leisurely and rewarding retirement, must now spend their savings at a much faster rate than previously anticipated.

The result for these individuals is a far cry from the life they had every right to expect. The result is too often a nightmare of disillusionment and despair.

Unfortunately, increasing taxes, particularly property taxes, is in many cases the chief source of an elderly citizen's financial dilemma. Senator PEARSON has recognized the immediate need for relief of this burden in a perceptive article published in the American Association of Retired Persons' magazine, Modern Maturity.

Mr. President, I ask unanimous consent that the article, entitled "Property Taxes—What To Do?" be printed in the RECORD.

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

PROPERTY TAXES—WHAT TO DO

(By Senator JAMES B. PEARSON of Kansas)

Of the many burdens older Americans must bear, one of the heaviest is a tax on their homes. In the United States, about 70 per cent of all persons over 65 own their homes, yet the 40 per cent increase in property taxes since 1963 is forcing too many of these 14 million senior citizens to sell the homes which they have worked so long and hard to purchase. This burden must be eased and eased promptly.

This country owes its older citizens a retirement of dignity and purpose, including an active involvement in the mainstream of American life they helped create. Yet, too often, older Americans—particularly those living on fixed incomes such as Social Security, pensions or annuities—have been sent to the sidelines to exist on the edge of an inflation-produced poverty.

The cruel dilemma of the property tax is that it most directly affects the old and the young, for it is the old who have to pay high taxes on low incomes and the young whose education is currently dependent on property taxes. In the United States, 55 per cent of the costs of public education are financed by property taxes. Our reliance on a 19th century tax system to finance a 20th century education places us in the unacceptable position of bankrupting our schools or our homeowners.

We must find a better way to pay for the education of our youth. Decisions in courts and ballot boxes across the country have clearly marked the beginning of the end in our use of property taxes for education. Furthermore, in school districts throughout the nation, voters have been rejecting bond issues for public education. Schools in several states have closed after voters turned down school levies. Many more school systems, some in our largest cities, may have to close during this school year.

In some of the most far-reaching court decisions since the 1954 case of *Brown vs. Board of Education*, state and Federal courts have found that the property tax system of school finance is in violation of the equal protection clause of the Fourteenth Amendment. A California court ruled that taxation of local property to finance schools "invidiously discriminates" against the poor because the quality of the district's schools is dependent on its wealth. In the opinion of the court, a child living in a school district in which property values are low will not have access to educational resources equal to those of children living in wealthier districts. Federal courts in Texas and Minnesota have rendered similar opinions.

I do not believe that we can afford to wait for courts to reform our school finance system. If we do, we may end up with the financial equivalent of forced busing. State legislatures and the Congress of the United States must act promptly to assure adequate financing for public schools and to relieve the unfair school tax burdens placed on some of our people.

Relief can come in several forms. I have proposed legislation to provide a Federal tax credit to all citizens over 65 who pay real or property taxes. This bill is still pending and I am optimistic that it will pass during the second session of the 92nd Congress.

In his State of the Union address, President Nixon promised that he would make "revoluntionary recommendations" concerning school finance and property taxes. He has directed the President's Commission on School Finance, the United States Treasury and the Advisory Commission on Intergovernmental Relations to devise new methods for financing public education.

While it is too early to speculate on possible recommendations, I am confident that the Administration will offer a sound and equitable alternative to our current system of educational finance. The President and the Congress working together must devise a financially sound and equitable method of paying for schools. They must provide adequate revenue for education and relief for hard-pressed taxpayers.

Among the hardest pressed American taxpayers are elderly homeowners who have few opportunities to ease their tax burdens with writeoffs and tax credits. They pay, and pay in full, for education and other public services. We must heed their clear signal of distress. We must act now to provide an alternate system for financing education—on the state and, most importantly, on the national level.

Reduced property taxes would most certainly ease the financial strain on older Americans, while increased Federal aid could help provide a quality education for all children of our country. Clearly, we owe this to our old as well as our young.

THE NORTH VIETNAMESE INVASION OF SOUTH VIETNAM

Mr. McGEE. Mr. President, the current North Vietnamese offensive, which is not limited to just South Vietnam alone but also includes Cambodia and Laos, has long been predicted.

It was felt by many that the North Vietnamese would launch a massive offensive during this election year in an effort to embarrass the administration or promote domestic pressure on the President no matter how small a success the enemy forces experienced.

I think it is appropriate, at this point, to note that the North Vietnamese construction of a major infiltration route across the DMZ is in violation of the 1954 Geneva accords providing for a demilitarized buffer between North and South Vietnam and the 1968 understandings which led to the cessation of U.S. bombardments against North Vietnam, provided that respect for the status of the DMZ was maintained.

There are many in this country who may be tempted to criticize what they envisage as an escalation of the air war on our part. But I hasten to point out that we made clear in negotiations leading to this bombing halt that we considered respect for the DMZ as a situation in which there would be no firing of artillery, rockets, or mortars from, across, or within the DMZ and there would be no movement across or within the DMZ.

Hanoi's latest invasion across the DMZ is a clear and blatant violation of the 1968 understandings. It is also important to note that throughout the period of buildup for the anticipated offensive the United States showed great restraint.

We tabled a comprehensive eight-point peace proposal with sweeping provisions for a settlement fair to both sides even as we knew that these offensive preparations were underway. We leaned over backward to show our will for peace and genuine desire to bring the conflict to an honorable end. The invasion across the DMZ has been Hanoi's response. Under these circumstances the United States must respond with its air and naval power in support of the South Vietnamese.

I think all of us should be in agreement that so long as Hanoi persists in this invasion, in violation of the 1954 Geneva accords and the 1968 understandings, we must support the Saigon forces with our air and naval power.

To those who would say that the current invasion spells the doom of the Vietnamization program, I would warn all to await the outcome of the battle. The occupation of territory in South Vietnam by a massive North Vietnamese invasion force for a limited duration of time does not dispel administration claims that Vietnamization has taken hold in South Vietnam. On the contrary, the real test of Vietnamization will rest with the question of whether the invasion can be repelled or not.

ALASKA FISHING INDUSTRY

Mr. STEVENS. Mr. President, I have received some facts and figures which I believe will be of interest to the Senate and to the general public. They indicate the number of people in Alaska directly concerned with the fishing industry, particularly salmon fishermen. The statistics appeared in the Anchorage Daily Times of March 20, in the column "Tell It to Bud."

There are 14,370 Alaska residents who are commercial fishermen and 7,718 nonresident commercial fishermen. Approximately 11,718 of these 17,088 fishermen fish for salmon.

Although it is impossible to determine from what area outside of Alaska the nonresident commercial fishermen come, according to Mr. Roy Rickey, director of the division of commercial fisheries, a considerable number of the Bristol Bay gillnet fishermen come from California. He also indicates that a sizable number of halibut fishermen, shellfish fishermen, and gillnetters come from the Puget Sound area.

These facts and figures indicate the sizable number of fishermen employed in the Alaska fishing industry. They also indicate how many of these fishermen come from other areas of the United States. All these people have a distinct economic stake in the fisheries of Alaska. They are all directly concerned with the size of the fish runs available to them.

Therefore, I do not exaggerate when I indicate that this valuable resource is immensely important, not only to the people of Alaska, but to fishermen and their families from throughout the entire Western United States. In fact, not only the fishermen themselves, but also their families, and the merchants and townspeople who directly depend upon them for their business, have substantial interests in the well-being of our fishing industry.

Many Senators and Representatives have introduced legislation to solve the numerous problems facing the fishing industry. I myself have done so. I have mentioned these facts and figures to indicate that the problems of the fishing industry in Alaska affect not only Alaskans, but people throughout the entire United States who must depend, directly or indirectly, upon the Alaska fishing industry for their livelihood.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

WAR POWERS ACT

The PRESIDING OFFICER (Mr. MANSFIELD). In accordance with the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The legislative clerk read as follows:

A 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.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The Senator from Virginia is recognized.

Mr. SPONG. Mr. President, I would like to take this opportunity to summarize some of the points which have been made during this debate. I believe that it is important to summarize these points at this time, because all Members of the Senate should be aware of them as they vote on various motions and amendments, a number of which are designed to weaken or defeat this bill.

First, the sponsors of this legislation believe the war power is a shared power: That responsibility for making war was granted by the framers of the Constitution to both Congress and the President. I discussed this in detail in a Senate floor statement on March 29 and referred to certain aspects of the shared responsibility on yesterday. Briefly, I and the other sponsors of this legislation believe the framers of the Constitution intended for Congress to declare war, that is, to determine when our troops should initiate hostilities abroad, when U.S. Armed Forces should be involved in offensive actions, and that the President should serve as Commander in Chief, conducting the war.

During this debate, we have said that there are certain constitutional authorities which the President has: To repel attacks on the United States and its troops or the threats of imminent attacks on either, to rescue U.S. nationals abroad who are endangered and to act pursuant to congressional authorization. We do not believe these prerogatives can be modified by legislation and we do not seek to do so. In fact, we seek to reaffirm them.

Likewise, however, we also seek to reaffirm the right of Congress to declare war. Such declarations—or at least the effectiveness of such declarations—are closely related to the deployment of troops and the committing of troops to hostilities. Thus, we who support this bill believe the Congress must have a role in the committing of U.S. soldiers and sailors to hostilities in order to render effective the power to declare war.

We are aware of the fact that Congress has tended not to act in the past, that Congress itself has created a void into which a number of Presidents have stepped. But we do not believe that the situation which has resulted—basically one of presidential hegemony—is what the framers of the Constitution intended or what is in the best interests of preserving the balance of powers in our Government.

Because this balance should be preserved, the pending legislation has been offered. It is designed to permit the President to take those actions necessary to defend our Nation, our troops, and our citizens, but to give Congress a voice in changing our Nation's status from peace to war.

Furthermore, we believe we have the authority to reaffirm the powers and to establish a means of carrying out these powers through the necessary and proper clause which permits us in Congress both to make the rules and regulations necessary for carrying into effect our own powers and to make the rules and regulations necessary for the carrying into effect "all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof."

We who support this legislation do not believe that it is, in and of itself, a panacea for all our problems. We do not suggest that we have thought of all particular contingencies which may arise in the future. But, what we have provided in this bill is a set of procedures, a methodology which will facilitate both the Congress and the President in the exercise of the war powers which were granted to each by the Constitution. I believe this is a particularly important point and I wish to reemphasize it. We are not in this legislation praising or condemning any policy. We are not attempting to foresee every situation which may occur in the future. But, we are seeking to delineate a process for dealing with those situations.

And, we believe that having such a process is not only preferable to the situation we have today, but also in line with the intent of the framers of the Constitution and necessary to the balance of powers which is an inalienable part of our governmental tradition.

Turning from the constitutional aspect of the problem to the practical aspect, I would like to call the attention of my colleagues to several points.

One is that a disagreement over the committing of our Armed Forces to hostilities can be a deeply divisive issue in our Nation. It seems to me that both for

the stability of our country and in order to reassure our allies of our determination to maintain positions, it is far more sensible to have a commitment based on both congressional and executive consultation than one which creates tension among our branches of Government and between our Government and our people.

From the very thorough study undertaken by the Subcommittee on Security Agreements and Commitments Abroad, chaired by the distinguished Senator from Missouri (Mr. SYMINGTON) we know that our Nation has extensive treaty commitments and a multitude of major—375—and minor—3,000—military installations abroad, which make it very possible that U.S. forces could become involved in some type of hostilities in the future. What we who support this bill are seeking is a means for dealing with those possible situations, should they arise—a means which will involve both Congress and the President.

A second matter involves whether the judgment of one man, the President, and his advisers, is preferable to the judgment of many men including the President and the Congress. I do not believe that either the President or the Congress possesses a monopoly of wisdom or perfection. And, I believe the chances of our making grim mistakes, of venturing unwittingly into undesirable situations, of acting in a manner we will later regret, are far less likely when we have had the benefit of debate and the consideration of many men.

As I indicated earlier, this does not mean that the President should not be permitted to act quickly in emergency situations, that he should be precluded from acting in a crisis as the situation requires. Indeed, that is not only permitted, but expected under the bill.

But, we also expect, and believe on a practical basis, as well as the constitutional one discussed earlier, that it is far better for us as a people and for our Nation as allied with many other governments to have a decision resulting from deliberations and consultations of both Congress and the executive branch.

Mr. McGEE. Mr. President, yesterday I submitted an amendment to the War Powers Act which would establish a National Commission on U.S. Foreign Policy, National Commitments, and War Powers.

The main reason for submitting my amendment is that I sincerely feel that the War Powers Act does not go far enough in arriving at a workable mechanism for decisionmaking in the world of 1972 as it attempts to redress what the proponents of S. 2956 feel has been an abuse of the legislative branch's war powers role by the Executive.

As I emphasized yesterday, my amendment in no way alters the substance of S. 2956, the Javits bill, but is rather a supplement or addition to the bill.

I shall outline briefly what my amendment entails. It would establish a 24-member commission, 12 members to be appointed by the President from private life. In addition, the President of the Senate and the Speaker of the House would each appoint six Members from their respective Chambers, three from the majority party and three from the minority party.

The President shall select a Chairman of the Commission from among the public appointees.

The Commission would submit a report on its review not later than 2 years after funds are first appropriated to carry out this section.

Since the world situation and relations among nations have vastly changed since our Founding Fathers drafted the Constitution in 1787, and since questions have arisen as to the respective constitutional powers of the executive and legislative branches of our Government, with respect to the formulation of U.S. foreign policy, national commitments, and war powers, I believe that it is essential that a comprehensive review of these questions be conducted by our best minds of diverse backgrounds and philosophies.

It would be up to the Commission to determine whether, and to what extent, if any, revisions are necessary in the Constitution, laws, and decisionmaking processes of the United States as they relate to the formulation of our foreign policy, national commitments, and the war powers. Their recommendations would then be submitted by the President to Congress for its consideration and such action as was deemed necessary.

In other words, my proposed amendment would commission a study which would go far beyond the issue of war powers, now being debated by the Senate.

CHECKING AND BALANCING OUR SYSTEM OF GOVERNMENT—EXECUTIVE AND CONGRESS

Mr. HUMPHREY. Mr. President, I rise to register my support for the war powers legislation sponsored by Senators JAVITS, EAGLETON, SPONG, and STENNIS. They are to be commended for laying before this body a proposal which represents a profound and fundamental contribution to our system of Government.

This legislation is in keeping with Congress' constitutional authority and responsibility. In fact, it restores the spirit and the letter of the Constitution to our system of Government. Article I, section 8, compels the Congress to make all laws necessary and proper for the carrying into execution of the executive power of the President. The war powers bill of 1971 is an attempt to do just that—to regulate by statute for the first time in the constitutional history of the United States, the conduct of the shared executive and congressional power with respect to war and the entry into war. The bill takes into account the types of hostilities which have occurred in the history of contemporary warfare. Through shared power between the executive and legislative branches of Government, this legislation now before us would enable our Government to react responsibly and democratically in times of crisis.

It is astonishing when one considers the fact that with a few technical minor exceptions, no President has ever proposed, and no Congress has ever yet legislated, on this vital subject. We are finally coming to grips with a responsibility which the Constitution has laid at our doorstep, but which we, as legislators, have ben too timid and too preoccupied to carry out. It is a matter of profound regret that we should do this only, because of the insistent demands of the Vietnam war and the sharp realization now of the need to do what we should have done long ago.

At least we now have the opportunity to implement appropriate reforms. S. 2956 attends to the sharing of constitutional authority for the use of our Armed Forces in specifically defined circumstances. Last July 1971, I introduced legislation to establish a Joint Committee on National Security (S. 2290) which would have the overall responsibility of studying and planning for appropriate policies affecting our national security. It would permit Congress to have the direct input which is necessary for it to exercise its constitutional role of approving measures undertaken by the President in such national security related areas as national defense, treaties, foreign policy, foreign assistance, and CIA activities. These two bills complement one another in an effort to make necessary adjustments in our system of Government which our contemporary society requires.

Aside from the inherent legal justifications for the war powers bill of 1971, there are the urgent demands of the time which necessitate its enactment. There is national disappointment and dismay over Vietnam. The people of this country have a deep sense of guilt, and a conviction that we have compounded a gross national error. I agree.

The temptation in this body may have been strong to search for scapegoats for those errors. It may still exist in certain quarters of our Government, but most of us have rejected any attempt to impugn the motives of American leaders or the American public. We did this once before, in the McCarthy era, when the Senate of the United States demeaned itself by providing a favorable climate for the most irresponsible demagogic effort to expunge a sense of national guilt by pushing the label of traitor on those who were responsible for the Communist victory in the Chinese civil war.

Now, however, this body is taking much more responsible action. Instead of looking to the past, it is examining the future. Instead of searching for victims, it is attempting to construct a machinery for the proper sharing of war powers if the need should arise. I applaud this measure. I am gratified that this Nation is turning the lessons of Vietnam into positive guidelines and is avoiding the kind of recrimination and sickness which marked our disappointment over the failure of earlier policies in the Far East in the 1940's and 1950's.

The bill before us establishes rules of practice. There is no intent here to alter constitutional allocations of power. There never was any question in my mind that the original version of S. 2956 allowed for continued U.S. participation in NATO, the United Nations Command in Korea, and the North American Air Defense Command. There was never any doubt in my mind that the President would not be impeded from exercizing his power as Commander in Chief. To clarify whatever doubts some Members of this body may have had in this regard,

Senator JAVITS introduced and the Senate unanimously accepted three amendments which should serve to remove any shadow of a doubt.

Some critics, nevertheless, still contend that this catalog of unimpaired Presidential authority is too restrictive. They have warned us that history provides an amazing variety of unexpected events, and chains of circumstances, and that for Congress to lay down a set of conditions under which the President can act on his own is to exclude unilateral Presidential authority on all other occasions.

Of course it is. And this is among the most significant purposes of the legislation. It states that a President may act under certain conditions on his own, but that in all other circumstances he must have the authority of the Congress. In short, he may defend the territory of the United States and its Armed Forces and its citizens. But in all other situations, he must act in conjunction with the Congress.

In my judgment, the Constitution goes no further. The President has the authority as Commander in Chief to repel attacks against the United States. He does not have unilateral authority, occasionally in the past asserted for him, of going beyond this. The President is inhibited by the Constitution of launching an attack on the armed forces or territory of another country in defense of America.

It may be granted that there will be circumstances beyond the three conditions set forth in section 3, where the country ought to move, and to engage in hostilities. S. 2956 merely provides that to do so, the Congress' responsibility must also be engaged. The choice will not and should not be for the President alone.

Some say that the Congress cannot adequately discharge this responsibility. They have noted the general movement toward increasing executive responsibility, and constantly reduced congressional involvement in the war/peace choices, and have concluded that this is an inevitable consequence of the ponderous nature of the parliamentary machinery. Congress, they say, is inadequately equipped to hurdle the challenges of war and peace in this country. The President, so this reasoning goes, must have unilateral authority, because Congress cannot move.

In my judgment, this conclusion is grossly unfair and incorrect. Congress can move and act responsibly when it is consulted, when it is given a chance. History shows this to be true, even though the record may not be flawless. The flaws are as much due to executive mishandling and misrepresentation as to congressional inepititude. The Tonkin Gulf resolution is a case in point where Congress was asked to approve action already initiated by the executive branch. It was asked to accept information which the Pentagon papers discredit.

The Tonkin Gulf resolution brought us massive American military involvement in Indochina. Its repeal has served to expedite withdrawals. Congress can better seek to avoid this kind of action which announced Vietnam in the future if it has the legal and institutional machinery to prepare for crises and avert them with caution. The war powers bill provides the legal framework. Other legislation, such as the bill to establish a Joint Committee on National Security, which I introduced, would provide the operational framework. I intend to introduce additional legislation to provide for an independent informational arm of the Congress, supplying the kind of nonexecutive branch resource input Congress needs to make decisions based on an in-depth analysis.

In Congress and throughout the Nation there is a receptiveness and even a demand for a change in our institutions of Government. We all recognize this mood and many of us welcome it as an enlightened epoch in American history. An indication of congressional preparedness for the acceptance of an evolving world is in the debate now underway to restore the balance of responsibility between our executive and legislative branches of Government. The war powers bill would move dramatically in that direction.

To those who say Congress is not ready to be trusted with more responsibility, I say it never was more ready. This is not a time to wipe out Congress' engagement with constitutional authority, but a time to implement it fully.

There are others who say that Congress is not equal to the task because it lacks essential information on which to base sound judgments involving the Nation's commitment to emergencies, hostilities, and war. But the fact that Congress has been denied information is in part the responsibility and fault of the executive itself. We have all seen the increasing jealousy of the executive department over information pertaining to our national security. The knot is growing tighter and tighter. It is increasingly difficult to get the facts from the White House and from the Departments of State and Defense.

An increased flow of information and vastly expanded body of knowledge to the Congress are essential along the lines I have already suggested. In more immediate terms, the executive branch could provide more information with very little difficulty. To start with, classification procedures in the executive have isolated Congress, the public, and even our own Government officials from each other. They have resulted in the rarification of our decision process at a time when it should be simplified and open. Were the Joint Committee on National Security established, it would immediately address itself to this problem and make recommendations to be implemented without delay.

Moreover, the war powers bill would serve to correct the sporadic flow of information between the Executive and Congress once an outbreak in hostilities involving American Armed Forces was underway. Section 4 of the bill requires the President to report promptly to Congress and give a full accounting of the circumstances surrounding the hostilities. Thereafter, the President would be required to report periodically to Congress. Were such a measure in effect during our involvement in Vietnam, there would likely have been a greater spirit of trust and confidence between the President, his officers, and the Congress than there is today. The only way to restore the confidence which has been lost is through the kind of regulated communication set out in S. 2956.

There is no argument, therefore, for opponents of the war powers bill to say, on the one hand, that Congress cannot discharge its warmaking responsibilities under the Constitution, because it lacks information, and at the same time refuse to produce that information.

I have no doubt that Congress needs to be better informed. For this purpose we will, I hope, shortly enact House Joint Resolution 1 and S. 2290, essential companion measures to S. 2956. House Joint Resolution 1 will lay the basis for an expanded flow of information as to the disposition of the U.S. Armed Forces abroad and other commitments which could lead toward the hostilities with which S. 2956 deals. House Joint Resolution 1 is an essential complement and companion measure to S. 2956, as is the Humphrey bill to establish a Joint Committee on National Security, S. 2290.

The purpose of the war powers bill is to arrest the trend toward absolute Presidential authority in war decisions, and to make those decisions once again a matter of shared responsibility. It is essentially to change the nature of the Presidency, and to steer the Nation away from dangers and difficulties toward which we have been heading.

The Presidency in the last 10 years has tended increasingly toward an ever more-dominant role. Presidents have increasingly sat at the apex of executive authority. They have, as I have indicated, increasingly monopolized and restrained the flow of information vitally affecting and describing the disposition of our Armed Forces and commitments in war matters. And they have increasingly relied on White House staffs, immune from congressional interception, for decisions affecting whether this Nation engages in hostilities of such consequence as Vietnam.

These trends have had serious consequences. In the first place, the entire responsibility for the success or failure of our military efforts abroad has in effect been transferred to a single person. The monopolization by the President of war decisions also tends to politicize them. The Presidency, by definition, is an institution of one party. The Congress represents both. To engage the Congress in the warmaking decisions is to involve both parties and to create a true bipartisanship.

I have witnessed the exercise of warmaking authority at both ends of Pennsylvania Avenue for several long and difficult years. They have been trying years, both personally and for the entire country. I have been privileged to sit in this Chamber, and watch the Congress of the United States, on occasion, deliberate with great wisdom and perception the most serious questions of disarmament, NATO, and weapons appropriations. I have seen this body enact other legislation funding this country's involvement

in foreign adventures, ignoring its constitutional responsibilities by convincing itself that it was merely funding the executive's programs. In fact, this results in underwriting those programs and making them its own.

We have seen Presidents, impelled by overwhelming political demands on that office in these times, gather unto themselves the control of information, monopolize the decisionmaking within the executive branch, concentrate that process increasingly in the inner recesses of the White House.

Now that we have the wisdom and luxury of hindsight, let us stop and restore what is missing in our Government—congressional participation. The time has come for this legislation.

The time has come for Congress to exercise its responsibilities to make laws necessary and proper for the conduct of the authority of the President under the Constitution, as well as the duty of the Congress to declare war and make rules and regulations for the governance of the Armed Forces. The time has come for us to face up to the lessons of Vietnam, to legislate, as well as foresight can allow us to legislate.

It is said that to inject the Congress into the great decisions of our foreign affairs is a mistake. It is said that the Congress cannot handle such matters. It is said that history reveals that Congress' involvement is in most instances unfortunate and does not help the cause of peace and international order—witness, some critics say, Congress' crabbing attitude toward the League of Nations, the neutrality acts of the 1930's and its enactment of the first World War II draft law by a single vote.

My answer to this is that the record of the Executive, if one is prepared to be honest about it and examine all the pages of our history, is very little better. The Mexican War, the Spanish-American War, and now Vietnam demonstrate that the White House does not have all the wisdom of this Nation in warmaking decisions. And by the same token, Congress' contribution to a constructive foreign policy has not been trivial. SALT, the Peace Corps, or Arms Control and Disarmament Agency, Public Law 480, all originated with my close association in the Congress.

I grant that our procedures are inadequate. I grant that our information is shockingly limited. I grant that our ways of doing business are outmoded. We must change. We must organize ourselves effectively to discharge the responsibilities which the Constitution has laid out for us for almost 200 years.

I am convinced we can. And I have no doubt that, once the new relationship for the discharge of warmaking responsibilities provided by S. 2956 are established, the United States will be better equipped to meet the awesome challenges of the world community than it is now. It will be better prepared to meet the needs of its own people.

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 (Mr. STEVENSON). Without objection, it is so ordered.

ORDER FOR LAYING BEFORE THE SENATE THE UNFINISHED BUSINESS ON MONDAY, APRIL 10, 1972

Mr. ROBERT C. BYRD. Mr. President, with the concurrence of the distinguished Senator from Nebraska (Mr. HRUSKA) and the distinguished Senator from Virginia (Mr. SPONG), and by authorization of the distinguished majority leader, I ask unanimous consent that, on Monday next, April 10, 1972, immediately following the period for the transaction of routine morning business, the Chair lay before the Senate the unfinished business.

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

WAR POWERS ACT—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday next, April 10, 1972, with the laying before the Senate of the unfinished business, the time on the pending motion by the distinguished Senator from Nebraska (Mr. HRUSKA), to refer the bill to the Committee on the Judiciary, begin running and be equally divided between and controlled throughout Monday and until adjournment on Monday by the distinguished Senator from Nebraska (Mr. HRUSKA) and the distinguished Senator from Virginia (Mr. SPONG); provided, further, that a vote occur on the motion by the distinguished Senator from Nebraska at the hour of 2 p.m. on Tuesday next, April 11, 1972.

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

Mr. ROBERT C. BYRD. Now, Mr. President, this agreement is with the understanding, of course, that the pending motion to refer may be set aside by unanimous consent at any time prior to the hour of 2 p.m. on Tuesday next, for the purpose of debating and/or acting upon other amendments to the pending unfinished business or for the transaction of other business.

Mr. HRUSKA. Mr. President, will the Senator from West Virginia yield?

Mr. ROBERT C. BYRD. I yield.

Mr. HRUSKA. Under the proposed unanimous-consent agreement, this Senator would be concerned as of now only with such unknown requests for time for the purpose of debate and discussion under the terms that would be accommodated by agreement between the Senator from Virginia and this Senator; is that correct?

Mr. ROBERT C. BYRD. Yes, that is correct. The agreement with respect to the control of time pertains only to Monday next. There is no control of time today. There is no control of time on Tuesday next. Of course, the motion which is pending is the motion of the Senator from Nebraska. To set that aside temporarily would require unanimous consent, and in accordance with the agreement now agreed to, the vote on the pending motion will occur on Tuesday next at 2 p.m. The agreement also precludes any motion to table the pending motion to refer.

Mr. SPONG. May I ask a question of the distinguished Senator from West Virginia?

Mr. ROBERT C. BYRD. Yes; certainly.

Mr. SPONG. I think he was clear on this point, but all the time on Monday next, in the absence of a unanimous-consent agreement, will be controlled by the Senator from Nebraska and the floor managers of the bill, is that correct?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. HRUSKA. Mr. President, may substitutes be designated for the Senator from Virginia (Mr. SPONG) and the Senator from Nebraska in the event the the presence of either of us is required away from the Chamber?

Mr. ROBERT C. BYRD. Mr. President, I modify my unanimous-consent request so as to provide that the time be controlled by the Senators named or their designees.

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

Mr. ROBERT C. BYRD. I thank the two Senators.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR TRANSACTION OF ROUTINE BUSINESS ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday next, immediately following the recognition of the two leaders under the standing order, there be a period for the transaction of routine business for not to exceed 30 minutes, with statements therein limited to 3 minutes each.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. 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. HRUSKA. Mr. President, on behalf of the distinguished senior Sena-

tor from North Carolina and myself, I have moved that the proposed "War Powers Act," S. 2956, which is now the pending business of the Senate, be referred under rule 26.1 to the Committee on the Judiciary for further study and subsequent reporting of the committee's views on the bill to the Senate.

To begin with, Mr. President, I wish to clear up any question about this motion being an effort to kill this bill. It is no such thing. Regardless of the suggestions made to the contrary, Senators should not base their votes on the assumption that a vote in favor of this motion is a vote to kill S. 2956. Such a vote is instead a vote to see that a bill raising far-reaching constitutional issues receives the fullest consideration in the proper forum before its fate is finally decided.

Mr. President, a number of points have been made on both sides of this motion prior to today. This continuing debate has been most useful. I wish today to speak further on several of these points, and to respond to some of the statements made by opponents of this motion.

The very extensive consideration given this bill by the Foreign Relations Committee is both recognized and appreciated. But does this mean that further consideration is not in order? On the contrary, the floor debate on this bill thus far makes it plain that the version produced by the Foreign Relations Committee is far from satisfactory to a number of Senators, and with good reason. The proponents of this bill say, however, that further committee study is not necessary. It has been maintained that just because a bill raises constitutional issues does not mean that the Judiciary Committee should thereby have cause to examine it. A "Dear Colleague" letter has been circulated which quotes the majority leader and the chairman of the Armed Services Committee to the effect that under no circumstances should S. 2956 be referred to the Judiciary Committee.

Mr. President, what are the supporters of this bill afraid of? If it is as sound as they claim, it will certainly survive additional scrutiny by the Judiciary Committee. And if it is not, should we not do everything possible to improve the bill before it faces a final Senate vote?

This bill deals with a most fundamental question, one of the cornerstones of the U.S. Constitution. Its proponents describe S. 2956 as an effort to restore the balance of power between the executive and legislative branches on the use of armed force by this country. Viewed in their words alone, this is more than just a bill "which deals with constitutional questions," to use the words of one of the bill's chief sponsors. This proposal goes to the very heart of the doctrine of the separation of powers. There is, therefore, no doubt of the desirability and propriety of having this bill studied by the Judiciary Committee. This bill is a prime example of why the Senate has created the Subcommittee on Separation of Powers which, under the leadership of the distinguished Senator from North Carolina, has performed outstanding services in analyzing proposals dealing with this fundamental constitutional principle.

Mr. President, I have no desire to prejudge this bill without a fuller examination into the constitutional questions it raises. Referral to the Judiciary Committee will provide such an examination. But certain difficulties with S. 2956 and the arguments urged in its support are already obvious. To begin with, those who favor this proposal would have us believe that some form of legislation is needed to preserve for the Congress its rightful role in warmaking decisions. This is a premise which can be seriously contested.

Under the Constitution the power to declare war, to raise and support the military, and related powers, are vested in the Congress. The power to command and to deploy the Armed Forces is vested in the President as Commander in Chief. As Prof. Eugene Rostow pointed out in a debate with Prof. Alexander Bickel at Yale Law School last October, this is a typical example under our Constitution of divided power which is also shared. There are many other examples as well.

There are numerous instances in our history in which Presidents have deployed American Armed Forces outside of the United States in a way which invited hostile retaliation from a foreign power. Congress has on some of these occasions acquiesced in the President's action without formal ratification; on others it has ratified the President's actions; and on still others it has taken no action at all. On several of the occasions, individual Members of Congress, and, at the close of the Mexican War, one House of Congress, on a preliminary vote, have protested Executive use of the Armed Forces. While a particular course of Executive conduct cannot conclusively establish a constitutional precedent in the same manner as it would be accomplished by an authoritative judicial decision, a long-continued practice on the part of the Executive, acquiesced in by the Congress, is itself some evidence of the existence of the constitutional authority necessary to support the practice. As stated by Justice Frankfurter in his concurring opinion in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 610:

> The Constitution is a framework for government. Therefore the way the framework is consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislative, but they give meaning to the words of the text or supply them. 348 U.S. at 610.

The historical examples have been marshalled in numerous recent studies of the President's power, and I will but summarize some of them briefly.

President Jefferson, in 1801, sent a small squadron of American naval vessels into the Mediterranean to protect U.S. commerce against the Barbary pirates. He was of the view that for these ships to take offensive, as opposed to defensive, action, congressional action would be necessary. Yet it is worth noting that by dispatching these warships to the Barbary Coast to protect U.S. commerce from piracy, Jefferson invited retaliation.

In 1845 President Polk ordered military forces to the coast of Mexico and to the western frontier of Texas in order to prevent any interference by Mexico with the proposed annexation of Texas to the United States. Following annexation in 1846, Polk ordered Gen. Zachary Taylor to march from the Nueces River which Mexico claimed as the southern border of Texas, to the Rio Grande, which Texas claimed as her southern boundary, and beyond. While so engaged, Taylor's forces encountered Mexican troops, and hostilities between the two nations commenced on April 25, 1846.

There had been no prior authorization by Congress for Taylor's march south of the Nueces. Justice Grier, in his opinion in the Prize cases, commented on this fact, stating:

> The battles of Palo Alto and Resaca de la Palma had been fought before the passage of the act of Congress of May 13, 1846, which recognized "a state of war as existing by the act of the Republic of Mexico." 2 Black 634.

In 1854, President Pierce approved the action of the naval officer who bombarded Greytown, Nicaragua, in retaliation against a revolutionary government that refused to make reparations for damage and violence to U.S. citizens. This action was upheld by Justice Samuel Nelson, a Justice of the Supreme Court of the United States, sitting as a Circuit Justice in *Durand* v. *Hollis*, 4 Blatch, 451 (1860). In his opinion in that case, Justice Nelson said:

> The question whether it was the duty of the President to interpose for the protection of the citizens at Greytown against an irresponsible and marauding community that had established itself there, was a public political question, in which the government, as well as the citizens whose interests were involved, was concerned, *and which belong to the Executive to determine;* and his decision is final and conclusive, and justified the defendant in the execution of his orders as Secretary of the Navy. 4 Blatch. 454–455 (emphasis supplied).

In April, 1861, President Lincoln called for 75,000 volunteers to suppress the rebellion by the Southern States, and proclaimed a blockade of the Confederacy. These actions were taken prior to their later ratification by Congress in July 1861. The Supreme Court upheld the validity of the President's action in proclaiming a blockade in the Prize Cases.

In 1900, President McKinley sent an expedition of 5,000 U.S. troops as a component of an international force during the Boxer Rebellion in China. While Congress recognized the existence of the conflict by providing combat pay, it neither declared war nor formally ratified the President's action.

Similar incidents in Central America took place under the administrations of Presidents Theodore Roosevelt, Taft, and Wilson. Naval or Armed Forces were sent to Panama, Nicaragua, and twice to Mexico in the first two decades of the 20th century. On none of these occasions was there prior congressional authorization.

Prior to the Vietnam conflict, the most recent example of Presidential combat use of American forces without congressional declaration of war was President Truman's intervention in the Korean conflict. In many senses, this is undoubtedly the high-water mark of Executive exercise of the power of Commander in Chief to commit American forces to hostilities.

Following the invasion of South Korea by the North Koreans in June 1950, and a request for aid by the United Nations Security Council, President Truman ordered air and sea forces to give South Korean troops cover and support and ordered the Seventh Fleet to guard Formosa. Ultimately 250,000 troops were engaged in the Korean war which lasted for more than 3 years.

President Truman relied upon the United Nations Charter as a basis for his action, as well as his power as Commander in Chief. The fact that his actions were authorized by the United Nations Charter, however, does not reduce the value of the incident as a precedent for Executive action in committing U.S. Armed Forces to extensive hostilities without a formal declaration of war by Congress. The United Nations Charter was ratified by the Senate and has the status of a treaty, but it does not by virtue of this fact override any constitutional provision. *Geofroy* v. *Riggs*, 133 U.S. 258; *Reid* v. *Covert*, 354 U.S. 1. If a congressional declaration of war would be required in other circumstances to commit U.S. forces to hostilities to the extent and nature of those undertaken in Korea, the ratification of the United Nations Charter would not obviate a like requirement in the case of the Korean conflict.

Presidents have likewise used their authority as Commander in Chief to deploy U.S. forces throughout the world. Critics of President Wilson claimed that his action in arming American merchant vessels in early 1917 precipitated our entry into the First World War.

Similarly, President Roosevelt's critics have asserted that various actions he took to aid the allies in the year 1941 played a part in our involvement in the Second World War. Whatever substance there may be to these criticisms, the Presidential actions do stand as the constructions placed by those two Presidents on their power as Commander in Chief of the Armed Forces.

I do not contend that these historical precedents establish the principle that the President alone has authority to deploy and commit American Armed Forces abroad. I mention them for the purpose of demonstrating that throughout our history our Presidents have, on occasion, deployed American forces without first obtaining congressional authorization. To be sure, our recent Presidents have engaged in the same practice, but in view of the similarity between the practices followed this century and last it cannot be validly contended that congressional authority has eroded in recent years. Far from demonstrating any weakness in our system, the events of the last 200 years confirm the wisdom of the flexible design set out in the Constitution.

Obviously this is an area in which cooperation between the President and Congress is vitally important. The suggestion that the power of Congress has somehow "atrophied" is untenable. If Congress had occasion to complain of President Truman in 1950, it had equal occasion to complain of President Polk in 1846.

The framers did not set up a checkerboard of rigidly marked alternately colored squares with one color assigned to the President and the other to Congress. They designed a more flexible plan for joint responsibility which left room for "play at the joints." Indisputably belonging to Congress alone is the decision as to how much money shall be appropriated to the raising and supporting of U.S. military forces. Indisputably belonging to the President alone is the power to repel sudden attacks, the power to determine how hostilities lawfully in progress shall be conducted, and the power to protect the lives and safety of U.S. forces in the field. The middle ground is understandably less clearly delineated, but there are guideposts based both on historic usage and the language of the Constitution which shed light on the proper allocation of responsibility in particular cases. More than this the framers wisely did not attempt; and I seriously question whether their decision on this point should, even if it could, be reversed by enactment of legislation now pending before the Senate.

The enactment of legislation which would lay down specific guidelines as to the respective constitutional roles of the President and Congress runs counter to each of these principles, and it is because of this that I am most concerned about the pending measure.

Before us now is this bill designed to define the limits of the President's authority in this area. This is, so it is claimed, a restorative measure, offered to insure that Congress may freely exercise those powers the Constitution and the courts have said it already has. But in attempting to make specific what the Constitution has left general, and in trying to define in advance the outer limits of the President's authority to act in the interest of national security, S. 2956 charts a precarious constitutional course.

Congress cannot by legislation draw to itself power meant to be shared at the least, and at the most to be exercised by a coequal branch of Government. If S. 2956 does this, it is unconstitutional. If it does not, it amounts to a useless surplusage which could easily lead to misunderstanding both within and outside this country.

Does the power of Congress to participate in the warmaking process need to be restored? I think history argues to the contrary. There have been close to 200 instances in which this country has employed military force. There have been but five formal declarations of war during this period, with perhaps six additional congressional authorizations. This Senator is compelled to agree with Professor Rostow, who asserted during the previously mentioned debate with Professor Bickel at Yale that there has been no substantial change in recent years in the pattern of constitutional usage regarding the division of the war powers between Congress and the Presidency.

Mr. President, only yesterday an article appeared in the New York Times by Eugene V. Rostow, who, as we all know, is professor of law at Yale and author of the forthcoming book "Peace in the Balance: The Future of American Foreign Policy." I read from the article:

The Javits war-powers bill confirms Oliver Wendell Holmes' quip that "great cases like hard cases make bad law" more vividly than any proposal since that of the Bricker Amendment. Responding to Vietnam, the Javits bill would radically change the constitutional relationship between Congress and the Presidency in making foreign policy. Ignoring their own repeated votes for Vietnam, the sponsors contend that the cause of the Vietnam tragedy is a modern usurpation of the war power by the President. As Senator Cooper points out, this claim rewrites history.

The Javits bill would annul the military provisions of all outstanding treaties and Congressional resolutions authorizing the use of force by the President, including NATO and the Middle East Resolution, as well as all Presidential commitments.

The bill is full of paradox. While it purports to assure the nation that a pacific Congress will keep jingoistic Presidents from engaging in limited wars like Korea or Vietnam, the bill would not have prevented Vietnam, which was authorized by Congress through the very procedures proposed in the bill as constitutionally proper. In Korea, the Javits bill would have required President Truman to obtain a Congressional resolution within thirty days—which would surely have been voted at the time, although Truman and the Congressional leaders thought it unwise to do so under the circumstances.

But if the Javits bill had been on the books, it would have prevented President Kennedy from handling the Cuban missile crisis as he did. There was no claim on that occasion that we were acting to forestall an imminent threat of armed attack. Under the Javits bill, Mr. Johnson could not have moved the fleet to keep the Soviet Union out of the Six-Day War in 1967. Mr. Nixon could not have used the same method to avert general war in the Middle East in 1970, or to confine the India-Pakistan War of 1972. Nor could earlier Presidents have used force or the threat of force to induce France to leave Mexico in 1865–66, to avoid war with Britain and Spain over Florida, or to send Commodore Perry to Japan.

The Javits bill would deprive the Presidency of powers which were used by George Washington and by nearly every President since—the powers of credible deterrent diplomacy the nation needs most if there is to be any hope of avoiding nuclear war.

With admirable candor, Senator Javits has said that the purpose of his bill is to reduce the elective Presidency, which the Founding Fathers were at pains to establish as an equal branch of the tripartite government, to the humble posture of George Washington during the Revolution, when he functioned as Commander in Chief, appointed by the Congress, and its creature in every respect.

Congress has made no bid for supremacy so bold, and so foreign to the Constitution, since the impeachment of Andrew Johnson. The legal theory of the bill would permit a plenipotentiary Congress to dominate the Presidency (and the courts) more completely than the House of Commons governs in Great Britain.

I do not favor increased Presidential power. But I do defend the constitutional pat-

tern of enforced cooperation between Congress and President we have inherited. Its corollary, however, is democratic responsibility. It is unseemly for astute and worldly men who spoke and voted for SEATO, the Tonkin Gulf Resolution, and other legislative steps into the Vietnam War now to claim that they were brainwashed, and therefore that we—and the world—should treat public acts of the United States as if they never happened. These men were not brainwashed. They knew everything the executive knew. But even if they had been brainwashed, their votes stand. The Fourteenth Amendment is not a nullity because it was ratified by many legislatures which voted under circumstances of fraud, or the coercion of military occupation.

Korea and Vietnam did not come about because the Presidency abrogated Congress' powers over foreign policy. The Congress fully supported those efforts when they were undertaken. The country is in a foreign policy crisis, however—not a constitutional crises, but an intellectual and emotional crisis caused by growing tension between what we do and what we think. The ideas which guided our response to Korea and Vietnam have suddenly lost their power to command. Those who now believe Korea and Vietnam were errors should recall the prudent wisdom of an earlier time, when the powers of the Supreme Court were left untouched even after the catastrophic error of Dred Scott. We have never needed the strong Presidency we have developed in nearly 200 years of intense experience more than we need it today. The Javits bill would turn the clock back to the Articles of Confederation, and emasculate the independent Presidency, it was one of the chief aims of the men of Annapolis and Philadelphia to create.

Mr. President, with that characterization of the pending measure, as currently made by a renowned scholar of the law, and particularly international law, there can be no doubt that there should be a referral of this measure to the Judiciary Committee for a greater exploration of its constitutional aspects. Certainly, if the bill would turn the clock back "to the Articles of Confederation and emasculate the independent presidency" in the fashion described and characterized by Professor Rostow, grave constitutional questions do persist. They permeate the legislation and this entire debate. There has not been that degree of inquiry into the constitutional aspects to which the subject is entitled.

Mr. President, the hearings in this instance are quite extensive. It had been represented to this Senator that the constitutional aspects were gone into with great care and in some depth. There were six members of the academic community who testified in favor of the bill and of its constitutionality, whereas only one such member of the scholastic world—to wit, John Norton Moore, professor of law at the University of Virginia—testified against it. He was joined, to be sure, by George Ball, who is an eminent authority but, nevertheless, not considered in this field as a member of the scholastic fraternity or of the university community.

While I single out these six authorities as being for the bill and one as being against it, I do not mean to derogate in any degree the excellence of the testimony of the other witnesses who testified either for or against the bill, and particularly the rather imposing list of our colleagues in the Senate and in the other body who testified on it.

But, Mr. President, I repeat, testifying for this bill from the professorial field were: Henry Steele Commager, professor of history at Amherst College; Alfred H. Kelly, professor of history at Wayne State University; Alpheus T. Mason, professor of political science at Princeton University; Alexander Bickel, professor of law at Yale University; and Arthur J. Goldberg, former Ambassador to the United Nations.

So there are six very eminent authorities in this field at least, except for the Honorable Arthur Goldberg, who are from collegiate circles, and from the circles of the universities and colleges, having professorial rank.

On the opposition, in addition to the Secretary of State and George Ball, there is only the name of John Norton Moore, professor of law at the University of Virginia.

Mr. President, I would not consider this—nor would any other reasonably minded—and intended individual—a fair balance in the effort to try to canvas in depth the constitutionality of the measure toward which their testimony was directed.

As a matter of fact, if a census were taken—if we want to depend on numbers—the work of those eminent scholars of international law and of the Constitution would very likely dominate the negative of the proposition on which evidence was adduced before the Foreign Relations Committee.

Certainly Prof. Eugene Rostow, whom I have already quoted at some length; Dean Erwin Griswold, currently the Solicitor General of the United States and at one time dean of the Harvard Law School; Eberhard Deutsch, of Louisiana; the works of Dean Acheson, the works and the testimony of Dean Rusk, of James McCracken Burns, and others that could be added to the list, would testify to that conclusion.

The names I have mentioned, I mention pretty much from memory and as a quick reference to that part of the file now at my podium here in this Chamber. I would like to add to this list of scholars, the names of Prof. Bernard Schwartz, Prof. Abram Chayes, and Prof. Quincy Wright.

Mr. President, I am most fearful that what we have in S. 2956 is not an effort to restore atrophied authority—an authority which is as alive and viable now as it was when the Constitution was framed—but is instead an attempt to amend the Constitution by a simple legislative act. I do not speak to the wisdom or the method by which S. 2956 would do this—others have already addressed this issue and will continue to do so. Perhaps I shall join them at a later time. In connection with the pending motion, however, the Senator from North Carolina and I are chiefly concerned with the legality of this proposal. As I have already stated, this issue demands further exploration by the Judiciary Committee, an exploration which is found sadly and grossly wanting in the record.

On April 4 the distinguished Senator from Arizona pointed out on the Senate floor that the committee which reported S. 2956 heard from but two professors of law on this proposal. With due deference to the distinguished figures from whom the Foreign Relations Committee did hear, I urge the Senate most strongly not to allow this measure to move further toward final passage without the benefit of additional comment from more of the many law professors who have made the Constitution their life's work.

Cases have been put forward in support of this legislation which, in the opinion of this Senator, represent extremely dubious legal precedent. A prime example is the case of *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952). This decision related to a purely domestic effort to take over the major steel mills of this country. If the case stands for anything at all, it is the reaffirmation of the President's authority to act as Commander in Chief in response to external threats as expressed in the following language from the opinion by Justice Jackson:

> We should not use this occasion to "circumscribe," much less to contract, the lawful role of the President as Commander-in-Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society.

Other cases such as *United States* v. *Midwestern Oil Company*, 236 U.S. 459 (1915), are not only of questionable support for the limitations drawn in S. 2956, but may actually provide precedent for the opposite point of view.

These cases and all other relevant decisions need to be analyzed and placed in their proper perspective by recognized constitutional scholars. Existing bodies of opinion need to be gathered within a logical framework of study. The Judiciary Committee is the place to do this, Mr. President, not the Senate floor.

I note with appreciation that the proponents of S. 2956 are not unwilling to amend their bill themselves in an effort to improve it. In spite of their earlier protestations to the contrary in response to defects described on the floor by opponents of the bill, yesterday the chief sponsors of this measure agreed to change it in several important particulars. As a further manifestation of their desire to produce the most effective and constitutionally compatible legislation possible, I would hope that the supporters of S. 2956 will join in this motion to refer the pending measure to the Committee on the Judiciary. This will guarantee that the bill will receive the benefit of the best available thinking on this subject, which the evidence and the record plainly indicate that it has not yet had.

Mr. President, I understand 2 months elapsed between the time this bill was ordered reported and the time a report was actually agreed upon. It seems to me that this fact reflects only in part the complexity and far-reaching nature of this legislation. And yet, after all this deliberation and study which was preceded by a volume of testimony as extensive as we have here, the bill has been amended by its sponsors with a few days

of floor debate under the Senate's belt. Some may call such an act a concession—others might call it an admission. Whatever it is called, it appears clear that the consideration of this bill within the Foreign Relations Committee did not resolve all the questions which are raised by this legislation.

Mr. President, in all fairness it should be said that there never is a time when all questions that are raised on any major piece of legislation can be solved or thoroughly canvassed. But with the lack of resolution of many major fundamental principles which are very close to the continued functioning and existence of the Constitution as it has been applied and developed over the years and when those principles are not followed and when those questions are not resolved, then in that case I think the Senate should in all due conscience vote to refer the bill to the Committee on the Judiciary so that fuller inquiry and analysis can be achieved.

Reasonable men often differ on questions of great moment. During the hearings on S. 2956 and other bills, the approach taken in this legislation was generally supported by Professor Bickel of Yale, and opposed by Professor Moore of the University of Virginia—both men distinguished legal scholars. This type of disagreement is not new. But the fact that there is some basic disagreement on what Congress can do under the Constitution by attempting to legislate in this area only underscores the fact that we must proceed with great caution.

Mr. President, a little bit ago reference was made to the fact that there were some seven figures from the professional world who testified. Six of them testified in favor of the bill and one testified against it. I made the statement following that reference that there were only two professors of law, and so there were. And those two professors of law who testified on the bill before the Senate Foreign Relations Committee were the professors I have just named, Professor Bickel of Yale Law School, and Professor Moore of the University of Virginia.

Certainly it cannot be considered that the testimony of only two law professors, two authorities who have devoted their lives to the law and who have made the continual study of law their life work, is a representative or a wide enough discussion of the legal issues involved in this very complex problem.

When reference to the Committee on the Judiciary is accomplished, that list can be expanded and an analysis made of the testimony that will be given on the proposition of the legality of the proposal before us in its impact upon the Constitution and its very likely infringement upon it and violation of it.

We will soon celebrate our 200th year as a Republic. The basic war powers provisions in the first two articles of our Constitution have remained as the guiding principles throughout our history, throughout the almost 200 incidents where armed force was employed by this country outside its borders. It is late in the day for us now to proclaim that we must have legislation now to improve this balance of power, to somehow make it balance better. Mr. President, either something balances or it does not balance. And as I read the Constitution, the balance is there—and has been all along. The Congress has been playing its role all along, through the use of the purse-strings, regulation of the size of the military, and expressions of viewpoints either in accord with or in opposition to policies taken by the executive branch. If the results have not always turned out to our liking, this does not mean that the Constitution is at fault. It could be ourselves, acting through our duly constituted representatives either in Congress or in the executive branch.

If it is felt that the provisions of the Constitution dealing with war powers are, indeed, in need of revision, let us then approach this subject in the proper fashion. We have amended the Constitution from time to time. It can be done again, if need be. But I do not believe bills like S. 2956 can legally be utilized to do this. In all frankness, I do not expect my opinion on this subject to be taken as the last word. But there are several scholars in the law who have already expressed similar concern, and undoubtedly others exist who would join them if given the opportunity to do so.

Mr. President, it is imperative that the Senate learn where the true weight of opinion lies on this critical question. Referral to the Judiciary Committee provides the ideal and proper means of accomplishing this purpose. It is for this reason that I urge the adoption of the motion offered today by this Senator on behalf of himself and the Senator from North Carolina.

Mr. GURNEY. Mr. President, although the proponents of this war powers bill claim that it is not their intention "to alter, amend, or adjust—the intent of the framers of the U.S. Constitution," this piece of legislation obviously tries to enumerate what the Founding Fathers deliberately left vague—the respective warmaking powers of the executive and legislative branches of our Government. The implications of such legislation go far beyond the realm of foreign policy; ultimately they touch upon the question of separation of powers as provided in article I, section 8 and article II, sections 1 and 2 of the U.S. Constitution. Since this is the case, I think that not only should the Foreign Relations Committee study the bill, but also the Senate Judiciary Committee which normally studies such matters. I, therefore, support the motion to refer this bill to the Judiciary Committee.

The Foreign Relations Committee report we have before us presents a picture of a clear and "explicit" constitutional delineation between the powers of the President and of Congress in the matter of declaring war. But, to take the point of view—as the committee report does—that Congress has the power to initiate war while the President simply is limited to having the responsibility for conducting the war once it has been declared, is both narrow and simplistic. Such an interpretation tries to eliminate the constitutional questions involved by not taking into account the fact that there are many situations in which the use of Armed Forces—or strategic movement of them—may be both essential and helpful to the conduct of foreign relations by the President. For instance, the Founding Fathers certainly did not intend that the right of the President to deploy troops to act as a deterrent to aggression or to be used in the exercise of diplomacy, be curtailed. Yet, this would be the net effect of this bill. Moreover, it was not the intention of the Founding Fathers to restrict the executive power of the President to conduct foreign relations or to protect U.S. citizens and interests, in situations not serious enough to require a declaration of war.

In addition, the 30-day time limit, in and of itself, raises questions of constitutionality. The Constitution has no such time limit, and as the distinguished Senator from Kentucky (Senator COOPER) has pointed out, if the President's power as Commander in Chief is constitutional, then how can an act of Congress constitutionally curtail it. Conversely, if the President does not have this authority, then Congress cannot delegate to him powers he does not possess. Congress already has, as Senator COOPER has pointed out and as a recent court decision—Orlando against Laird—has implied, the power of the purse available, should it wish to circumscribe presidential actions in this area. To expand this power by statute is, therefore, a constitutional as well as a foreign policy matter, and it should be considered in this light.

Those who favor this bill should recognize the appropriateness of referral to the Judiciary Committee. Practically everyone agrees that the purpose of this bill is to enhance the warmaking powers of Congress with respect to the President. Certainly the report of the Foreign Relations Committee reflects this opinion. And the principal sponsor of this bill, the distinguished senior Senator from New York, Senator JAVITS, clearly indicated that separation of powers was the issue here when he stated in a speech to the American Bar Association last February 5:

> Congress has learned from experience that it must devise practical new means for exercising in relation to "limited" and "undeclared" wars, the war powers reserved to it in article I, section 8 of the Constitution.

To the extent that these "practical new means" come into conflict with prerogatives that have been exercised by the President, we have—as I think everyone will agree—proposals that affect the separation of powers between the executive and legislative branches of our Government. This being the case, there is no reason for the Judiciary Committee not to examine the constitutional implications now that the Foreign Relations Committee has had a chance to look at it from a foreign policy standpoint. The fact that separation of powers questions have traditionally been of great concern to the Congress makes such an examination all the more appropriate.

As the distinguished Senator from Arizona, Senator GOLDWATER has brought to light with some diligent research, the United States has used its military forces almost 200 times, five declared wars and 192 undeclared—eight of which

involved actual fighting and 45 of which might be classified as major conflicts. These involvements have received the support of Congress and in a number of instances over the last 25 years Congress has given the President authority to use Armed Forces in a specific area by enacting a series of so-called area resolutions. The best known of these was the Gulf of Tonkin resolution, but there are others covering the Taiwan Straits, Cuba, Latin America, and the Middle East. Therefore, it cannot be said that Congress has not participated in, and been an integral part of, our recent military involvements.

This point is important to any discussion of the executive powers of the President which, of course, are the crux of the question here. In a 1952 case—Youngstown Co., against Sawyer—the Supreme Court had to rule on the extent of the President's powers as Commander in Chief. And, while the Court ruled that the President could not exercise that power to nationalize the steel industry, Justice Felix Frankfurter did point out, in a concurring opinion that:

> A systematic, unbroken, practice, long pursued to the knowledge of Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive power" vested in the President by section I of article II.

Certainly, the warmaking practices of the Executive have been "systematic" and "long pursued to the knowledge of Congress" without much question until just recently. Therefore, it would seem that the legislation contemplated here raises serious constitutional questions that should be considered by the Judiciary Committee as well as the Foreign Relations Committee.

For a little over a year now, I have been a member of the Judiciary Committee. During that time, I have seen that committee spend a good deal of time on questions involving separation of powers; in fact, the subcommittee on separation of powers held hearings on four major topics of that type last year alone.

For instance, in January 1971 the subcommittee took testimony on a bill, S. 1642, which, by defining adjournment, spells out the pocket veto power of the President as set forth in article I, section 7 of the Constitution. If that misuse of the adjournment procedure could violate the separation of powers provided for in the Constitution, detailed study of its possible impact certainly was, and is, appropriate.

In March 1971 another bill, S. 2581, came before the Separation of Powers Subcommittee. This bill concerned Presidential impoundment of funds and the possibility that such impoundment might erode the powers of Congress as set forth in article I, section 7 on which the argument for such Presidential power is based. The goal of these hearings was to determine the extent of impounding, the reasons for it, and the constitutionality of it.

In July and August of last year the question of executive privilege came up again before the Separation of Powers Subcommittee. The bill in question this time was S. 1125, which provides that executive privilege may be invoked only if the President signs a statement approving it and giving the reasons for it. The bill reflects a deep concern that the powers of the President under article II, section 3 of the Constitution are being used in such a way as to erode the principle of the separation of powers. Specifically at issue is: the power of the President to withhold information that otherwise might interfere with the performance of his duties, the power of Congress to obtain information in order to legislate effectively and, the public's right to be informed.

Finally, the practice of issuing Executive orders came in for closer scrutiny. In question were two bills that would have prevented the implementation of Executive Order 11605 which gives the SACB the power to hold hearings to determine whether or not organizations are subversive. The constitutional questions involved are whether such Executive orders usurp the legislative power of Congress as set forth in article I, section 7 and 8 and possibly abridge the first amendment right to freedom of speech.

If we are going to be consistent in holding hearings on questions involving separation of powers, keeping in mind the upcoming hearings on treatymaking powers, it would seem only appropriate that this war powers bill, which is just as much, if not more, a separation of powers issue than the five just mentioned, be referred to the Judiciary Committee in order that its constitutional implications might be fully considered.

Now I am aware, of course, that the sponsors of this bill are opposed to committing it to the Judiciary Committee. As a member of the Judiciary Committee and the Subcommittee on Separation of Powers, this opposition is incredible to me.

Whether one favors or opposes the concept of war powers legislation, everyone here must agree that this legislation presents major constitutional separation of powers questions, more so than any legislation this Congress has or will consider. It is deserving of the closest examination by a number of constitutional scholars and by the Committee on the Judiciary. Indeed, the foreign policy implications of this legislation are no more important than the question of the power of the Congress vis-a-vis the President.

If this legislation is as legally practical as its sponsors contend, then why their haste to make changes on the floor? If this legislation is legally sound, then what is there to fear from a careful examination of its constitutional implications? Nor need such a review represent an untoward delay in a final vote on this measure. I am sure that the committee will hold prompt hearings and move the legislation along most expeditiously.

It would seem to me that debate here on the floor of the Senate can only be improved were we to have the benefit of such an examination of the constitutional aspects of this bill.

I support the motion of the distinguished gentleman from Nebraska (Mr. HRUSKA) in his motion to commit this legislation to the Judiciary Committee.

Mr. EAGLETON. Mr. President, yesterday's Kansas City Star contained an editorial in support of the War Powers Act. The editorial is entitled "To Assure a Role for Congress in War-Making Powers."

The Star correctly describes the War Powers Act as legislation which would assure the role of Congress in the decision to go to war and not restrict the President in his use of power to repel attack on our Nation or our citizens abroad.

This editorial recognizes the serious imbalance that has developed in our governmental system in the field of warmaking. It correctly states that this legislation would "provide the American people a clear voice on whether our manpower and other national resources shall be invested in future combat ventures."

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

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

TO ASSURE A ROLE FOR CONGRESS IN WAR-MAKING POWERS

Should the President be able to commit the United States to war without specific boundaries on his powers to do so? The question has become increasingly important during the undeclared war in Vietnam. Many members of Congress have come to see a need to define this aspect of presidential authority. Yesterday the Senate began considering legislation which has that purpose.

The bill is a compromise of proposals by a Republican, Sen. Jacob Javits of New York, and two Democrats, Sen. John Stennis of Mississippi and Sen. Thomas Eagleton of Missouri. It has a strong chance of being approved despite the objections of President Nixon. He has termed the idea "a very great mistake . . . when situations can change so fast internationally that to wait until the Senate acts before the President can act might be . . . too late."

But the proposal in its present form would not bind the President all that tightly. True, the measure would require specific congressional authorization before the President could send American forces into hostilities. But it is a flexible requirement in that there are three situations which would not need prior authorization from Congress. The chief executive could act to repel attack on U.S. territory and armed forces, forestall threat of attack, and to retaliate. Congress then would have 30 days in which to endorse the President's action. If it declined to do so, he would have to recall the troops. One of three amendments adopted by the Senate yesterday would permit committed forces to keep fighting beyond 30 days if the President certified a necessity to protect troops during efforts for prompt disengagement.

This procedure would not take effect if Congress used its constitutional power to declare war. But Congress has declared war only five times: The War of 1812, The Mexican War, the Spanish-American War, World War I and World War II. Yet, between 1789 and 1971, U.S. forces went into military action overseas on more than 150 occasions. Of these, the Korean War from 1959 to 1963 and the Vietnam intervention from 1966 to the present were by far the most important.

The current move in Congress to define the war-making authority of the President

stems directly from the Vietnam experience. That fact caused Senator Stennis to observe:

"The last decade has taught us, if it has taught us anything, that this country must never again go to war without the full sanction of the American people. The only practical way for all parts of the nation to participate in such legislation is through the Congress."

This view is valid. Senator Stennis, who is chairman of the Armed Services Committee, has in mind situations in which the United States has a choice of going to war. There would be no application in the event of an attack on this country. Then the President would use his power to order defensive and retaliatory measures in the assurance that Congress would support his actions. That would be no real limitation on the constitutional authority of the President as commander-in-chief.

Still, the Nixon Administration views the Senate bill as overly restrictive. If legislation of this nature is to be enacted, the White House would prefer something along the line of a war powers resolution already voted by the House. The resolution calls for the President to consult Congress before sending Americans into armed conflict abroad but recognizes his authority to defend the nation and its citizens without specific legislative approval in extraordinary and emergency circumstances. These circumstances are not spelled out in the resolution.

For Congress to declare itself on war powers is in order. An imbalance has developed in the American federal system in the field of warmaking. The legislation being considered would tend to correct this imbalance. For it would provide the American people a clear voice on whether our manpower and other national resources shall be invested in future combat ventures. It can provide a restraint against being precipitated into other Vietnam-type situations without real public understanding of what is involved.

QUORUM CALL

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

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

Mr. BELLMON. Mr. President, as the time for the Senate to make its decision on S. 2596, known as the war powers bill, draws near I feel obligated to make my position perfectly clear.

First of all, it should be understood that I favor war powers legislation in principle. Indeed, even the executive branch has repeatedly stated its position that it does not oppose certain war powers legislation which has already passed the House of Representatives by a substantial majority, House Joint Resolution 1. There is, therefore, a general consciousness of the need for some legislation in regard to war powers. The administration does, however, oppose S. 2956. I join in that opposition.

My feeling on war powers legislation grew out of experiences I had while serving as Governor of my State between 1963 and 1967. On at least three occasions during that period President Johnson called various Governors from across the country to the White House to be briefed on events occurring in Vietnam and the facts back of his decision to involve this country in that conflict. It became obvious as I listened to the President on these occasions that here was a man who made a difficult decision, a decision that caused him great personal agony, and a decision he felt needed as broad understanding and support as could possibly be generated.

On numerous occasions, during and after the briefings that the President accorded the Governors, he made it possible for, and in fact I think in ways encouraged, Governors to make statements supporting his position in Vietnam and more or less urged us to do all we could to unify our States behind this national effort.

It became clear to me during that period that the present system, which had been used in bringing about our involvement in Vietnam, was clearly unsatisfactory to the President and was clearly unsatisfactory to the country, because the country had not unified behind the President, and it was clearly not adequate for the Congress, because very little opportunity for debate had been accorded that body. The passage of the Gulf of Tonkin resolution had been accomplished in such a short span of time that the reasons back of it were never understood.

As a result, also, the Congress continued to be divided. There were many Members of both the House and the Senate who repeatedly spoke out against our involvement in Vietnam, and, as a result, a very serious division grew up inside the country, which, in the opinion of many, including myself, finally caused the end of the President's political career.

So it was obvious to me at that time, and it is still obvious, that there is a need for a better system of obtaining national understanding of decisions that lead to the involvement of American Armed Forces in combat, and also a better need for an orderly procedure for Congress to unify behind the President or to refuse to do so. That is the reason I have favored the war powers legislation principle, but I find many deficiencies in this bill which caused me to decide to vote against it.

Many months ago, on May 14, 1971, the Secretary of State testified before the Senate's Committee on Foreign Relations with respect to war powers, and particularly with respect to the specific proposals which have resulted in S. 2956. He said then, that this particular bill is unconstitutional and unwise. It is worth bearing in mind that the Secretary of State is a distinguished lawyer, and a former Attorney General of the United States.

I am not a lawyer, but I have great respect for the opinions of the Secretary of State and others who have addressed themselves to the question of the constitutionality of this legislation.

From my study of those opinions with respect to the bill's constitutionality, it appears to me that the bill provides that the President may not even defend the territory of the United States itself for longer than 30 days, unless Congress expressly authorizes a continuation beyond that period. The Constitution, on the other hand, clearly contemplates that the President may take all necessary action to defend the territory of the United States with every available resource, and so long as necessary, without requiring special congressional authority.

The Founding Fathers could hardly have contemplated anything else. The only professor of constitutional law who testified for the bill in the committee hearings himself raised doubts that the President could be limited in this regard. Senator COOPER of Kentucky, a member of the Committee on Foreign Relations who recorded his individual views in the committee's report on S. 2956, also has pointed out that Congress lacks authority to restrict the exercise of presidential authority in this regard.

I sincerely believe that any attempt so to alter our constitutional system, which has long withstood the test of time, should not be undertaken without the most careful study. The issue goes to the heart of our constitutional system. A resolution of the issue requires—and indeed commands, that we bring to bear upon it the full intellectual resources of our society. I believe it is folly indeed for us to believe that we can today spell out in precise words all of the crises and emergencies which might arise in the future which would necessitate quick military action by the President. Indeed, the sponsors of S. 2956 themselves have proven the unworkability of the concept on which it is based. Having studied the matter for a year, and having had many days of hearings before the Committee on Foreign Relations, they were compelled this week to offer three separate amendments to cure obvious defects in the bill which even their learned and attentive study had failed to correct previously. And it is clear that these amendments still leave substantial gaps, and raise further questions. If all of this effort and study has produced a bill which fails to cover even those crises and emergency situations with which we are historically familiar, how can we be confident that the bill will be adequate to provide for future crises as yet unimagined. And on the issue of survival, we need more than confidence. We need certainty, or as close to it as human ingenuity and wisdom can bring us.

To be specific in only a couple of instances, I should like to call the attention of the Senate to line 25 on page 7 of the bill, which reads, in part, just preceding that:

or in situations where imminent involvement in hostilities is clearly indicated by the circumstances—

And then the word "only" is added.

To me that so restricts the President's powers to use the Armed Forces of the United States as to seriously jeopardize our national security and independence.

Also, there is language in line 17 on page 8 which reads:

but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States, and shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country...

To me those are restraints that would so limit and could so weaken any action the President might wish to take that they are an obvious invasion of the powers of his Office, and I seriously doubt that the Congress would be wise in undertaking any such course of action.

Apart from being unconstitutional and unwise in concept, the bill has very substantial practical defects. Serious questions have been raised as to whether the bill would permit the President to make military deployments in furtherance of our diplomatic and foreign policy interests without specific congressional authorization. A number of Senators have concluded, as I have concluded, that it does appear to restrict the President's power in this regard. As a result, enactment of this bill would raise serious questions as to our ability to act as required in any future crisis situation in the North Atlantic Treaty area, particularly one involving Berlin, or in an emergency in the Eastern Mediterranean.

The sponsors of the bill have sought to give reassurance in this regard, relying on the continued existence of the resolutions on Formosa, the Middle East, Cuba, and, presumably, Berlin. It is stated by the sponsors of the bill that these resolutions constitute the necessary express authority of Congress permitting the President to use Armed Forces in emergencies in those areas. A quick review of those resolutions proves that such reliance would be incorrect. The Middle East resolution, for example, which incidentally is 15 years old, specifies that:

> The United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism.

One can readily envision various crises which could arise to which this resolution clearly would not be applicable. The other resolutions are likewise considerably narrower than claimed by the sponsors of S. 2956. The legislative history of the Cuban resolution shows that it was not intended to authorize any particular future action; the Formosa resolution is 17 years old and addressed to a set of circumstances no longer fully pertinent; and the Berlin resolution, also 10 years old, simply expresses the sense of Congress and does not embody any specific statutory authorization. In light of the history, limitations, and age of these resolutions, the administration as much as 2 years ago officially stated its position that it would not rely on any of these resolutions as a source of authority for any decision in those areas in the future. Thus, contrary to the statements of the sponsors of S. 2956, the enactment of that bill would effectively impair the President's ability to act responsibly and effectively in those areas.

It is incumbent upon us to recognize that the question of war powers is a grave matter. It is not to be treated lightly. The administration is not alone in feeling that it is a subject worthy of the most considered study. The assembly of the American Bar Association on July 7, 1971, ordered a study and the preparation of a report as to the respective powers under the Constitution of the United States and the President and Congress to conduct and enter into war. That study is now in progress. Senators BEALL and MCGEE have both proposed during the current debate the establishment of a Presidential commission to study thoroughly the question of the allocation and exercise of constitutional war powers. I believe all thoughtful citizens must feel that this subject is one with respect to which action should be taken only after the most careful study and searching analysis.

I sincerely hope that the Senate will not act precipitously in the war powers field by passing S. 2956. The Senate has before it a substantial war powers bill already passed by the House of Representatives which, were it to be adopted by the Senate, could become law very quickly. I am persuaded that no other course is prudent, I am convinced that no other course would effectively serve and protect the interests of the American people. That is why I will support the motion to send this measure to the Judiciary Committee for its consideration.

Mr. President, there is no question that the decision to commit or not to commit American troops to combat is one of the greatest burdens that the President of our country ever faces. Undoubtedly, this was in the minds of our predecessors who drafted the Constitution, and who required that Congress share in bearing this burden and in making this decision. Clearly, events since our Nation was formed have shown that we need a new system, a new set of procedures for making the decision as to whether or not to enter combat, because the formal declaration of war, under modern conditions, may or may not be feasible.

But, as I have said earlier, I feel that the legislation we have before us is deficient in so many regards, and I feel that the consideration which it has been given has been so limited, that we would be acting in haste if we were to act affirmatively on this matter at the present time, and therefore I shall cast my vote to send this measure to the Committee on the Judiciary for its consideration.

Mr. President, I yield the floor.

ORDER OF BUSINESS

Mr. GOLDWATER. Mr. President, I yield to the Senator from Minnesota.

(The remarks Mr. HUMPHREY made at this point on the submission of Senate Resolution 292 and on the introduction of S. 3464 are printed in the RECORD, respectively, under Submission of a Resolution and Statements on Introduced Bills and Joint Resolutions.)

Mr. HUMPHREY. I thank the Senator from Arizona for his unfailing courtesy and cooperation.

Mr. GOLDWATER. Mr. President, it is always a pleasure to cooperate with one of my favorite candidates. [Laughter.]

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.

WHAT THE FOUNDING FATHERS THOUGHT ABOUT THE WAR POWERS

Mr. GOLDWATER. Mr. President, we will be asked to consider today the question of whether or not the war powers bill is so immersed with constitutional problems that it should be referred for a reasonable period of time to the Senate Judiciary Committee, which is assigned the responsibility of handling changes that require a constitutional amendment. Now, I am not a lawyer, but I believe that one can examine the major constitutional issues present here from the standpoint of history, something that anyone who cherishes the Constitution can read whether or not he has a law degree. For this reason, Mr. President, I plan to devote my remarks on this occasion to a review of what the framers of the Constitution had to say about its purpose when they were developing this Republic and what the experience of almost 200 years of practice and tradition under the Constitution has taught us.

I might start, Mr. President, by recalling that the Constitutional Convention rejected a clause giving Congress the power "to make war" and substituted for it only the power "to declare war." From brief records of the debate, it is quite clear that the framers at least had a purpose of "leaving to the Executive the power to repel sudden attacks." How much else the Founding Fathers meant to leave with the President is not specified in the debate, but it is significant that they had a difference in mind between the two terms and left the making of war with the President.

Mr. President, I believe we can gain some insight into what the framers of the Constitution meant by this change by learning what meaning these separate terms held for them in the 18th century. It does not take a lawyer to know that Samuel Johnson's Dictionary of the English Language was the one word reference then in use by educated people in America. I have obtained an edition of this dictionary which was current at the time of the Constitutional Convention and it is interesting to learn what the meaning of these words was at that time.

The term "to declare" was understood as meaning "to make known" or "to proclaim." The term "to make" was then defined as meaning "to create" or "to bring into any state or condition." This would indicate, Mr. President, that the words "to declare war" were meant to convey a kind of formal notice to the world that would initiate all the attributes of international law which arise with a declaration of war. The power "to make war," which was left with the President, meant that he could bring the Nation into a state of war if that was necessary in the national defense.

My impression is supported, Mr. President, by the fact that Hamilton writes in the Federalist No. 25 that declarations of war, even in the 18th century, were unusual compared with the number of nondeclared hostilities in which nations

were then engaged. In his testimony before the Senate Committee on Foreign Relations, Professor of Law John Moore confirmed this fact. He mentioned that one study of the years from 1700 to 1870 showed that less than 10 declarations of war were issued during this period, while 107 cases are reported in which hostilities were commenced without a declaration of war. Accordingly, it is quite clear that the framers were aware of a distinction between declared war and undeclared war and yet they chose to confer upon Congress only the limited, specific power "to declare war," not to "make" or "commence" it.

Next, Mr. President, I believe we should review the many passages of the Federalist Papers, where Madison, Jay, and Hamilton focus on the safety of the people as the first objective of Government. I repeat, the safety of the people as the first objective of Government. For example, Jay wrote in the Federalist No. 3 that:

> Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their safety seems to be the first.

That the ultimate decision over when to act for the safety of the Nation was left with the President, rather than Congress, is apparent from the writing by Madison and Hamilton in the Federalist No. 19. Here they state that the Constitutional Convention expressly rejected as being too weak the then current political model of the Germanic Empire in which the diet, or legislative body, was vested with the sole power to commence war. In any emergency, they wrote:

> Military preparation must be preceded by so many tedious discussions . . . that before the Diet can settle the arrangements the enemy are in the field.

While the focus of these writings was on the purpose of protecting the national safety, it is also important to consider Madison's instruction in the Federalist No. 37 that the framers intentionally had removed the direction of the military forces from Congress, where it had been deposited under the Articles of Confederation because it is "particularly dangerous to give the keys of the Treasury and the command of the Army into the same hands." Thus, Mr. President, we should observe that the Founding Fathers were concerned not only about depositing too much power with the Executive office, but were also watchful that they did not enable congressional usurpation to occur.

Moreover, Mr. President, we must remember the setting of the times in which the framers ratified the Constitution. We have heard much reference to the experience of the Founding Fathers with the commission given to Gen. George Washington when the Continental Congress appointed him to head the Colonial Forces. Yet, it was this very experience which the Founding Fathers wanted to prevent from ever occurring again under the new Constitution. Prof. David Watson, who wrote a two-volume textbook on the Constitution, found that of all the explanations of why the Constitution should make its President Commander in Chief:

> . . . none seems more reasonable than the fact that during the Revolution, Washington experienced great trouble and embarrassment resulting from the failure of Congress to support him with firmness and dispatch. There was a want of directness in the management of affairs during that period which was attributable to the absence of centralized authority to command. The members of the Convention knew this and probably thought they could prevent its recurrence by making the President Commander-in-Chief of the Army and Navy.

We might also review the words of J. H. McIlvaine, writing in the Princeton Review for October 1861, who is quoted by Dean Pomeroy in his great work on constitutional law. According to McIlvaine:

> It was the extreme weakness of the Confederation which caused the war of independence to drag its slow length along through seven dreary years . . . The treaties which the Confederation had made with foreign powers, it was forced to see violated and treated with contempt by its members; which brought upon it distrust from its friends, and scorn from its enemies. It had no standing among the nations of the world, because it had no power to secure the faith of its national obligations.

These historical references give us some understanding of why Professor Moore testified that he believes "reliance on the experience under the Articles of Confederation seems a frail reed for interpreting a Constitution promulgated in large measure as a result of dissatisfaction with the experience under the Articles." Contrary to the position taken by the authors of the bill, the Constitutional Convention was undoubtedly appalled at the difficulties Washington had encountered at the hands of the Continental Congress. Rather than wishing to perpetuate the experience of weakness and division which the country had suffered under the articles, I believe the framers intended to infuse national strength through the new office of the President.

Hamilton bears out this view in the Federalist No. 73, where he writes:

> Of all the cares or concerns of government, 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 executive authority.

Nor does the presidential power of direction over the military forces conflict in any way with the purpose of the Founding Fathers to avoid establishing a monarchy. Charles Evans Hughes, one of our great Supreme Court Justices, wrote in 1917:

> The prosecution of war demands in the highest degree the promptness, directness and unity of action in military operations which alone can proceed from the executive. This exclusive power to command the army and navy and thus direct and control campaigns exhibits not autocracy but democracy fighting effectively through its chosen instruments and in accordance with the established organic law.

Mr. President, the power of the Chief Executive as Commander in Chief has long been interpreted by constitutional authorities as being free of the policy directives of Congress. As early as 1836, John Quincy Adams stated:

> However, startled we may be at the idea that the Executive Chief Magistrate has the power of involving the nation in war, even without consulting Congress, an experience of fifty years has proved that in numberless cases he has and must have exercised the power.

In 1862, William Whiting wrote a book on war powers in which he declared that—

> For the military movements and measures essential to overcome the enemy—for the general conduct of the war—the President is responsible to and controlled by no other department of Government.

Whiting added that the Constitution "does not prescribe any territorial limits within the United States, to which his military operations shall be restricted."

Numerous constitutional writers have shared the same conclusion. Voluminous citations on this subject can be found in two law review articles which I have inserted in the RECORD, one on February 9 and the other on February 15 of this year. I will repeat only two of these now. One is a short quote by Professor Willoughby, who wrote a three-volume work on constitutional law. He observes that the President's power to send troops outside the country "as a means of preserving or advancing the foreign interests or relations of the United States" is a "discretionary right constitutionally vested in him, and, therefore, not subject to congressional control."

The other is a reference to the statement by William Howard Taft, father of the former Senator Robert Taft and grandfather of the present Senator ROBERT TAFT, who wrote in the Yale Law Journal that—

> It is clear that Congress may not usurp the functions of the Executive . . . by forbidding or directing the movements of the Army and Navy.

That was from a statement by Justice Taft.

Mr. President, these citations should be sufficient to show a very grave question of whether or not Congress can set up a mechanism which restrains the situations in which the President can act to protect America's freedoms and the length of time which he will have to do it in. But added to these writings is a remarkable chain of precedents which Presidents have forged over the years. As I mentioned yesterday, there have been at least 197 hostilities in America's history, and only five of them have been declared. It is amazing how little the American people know about this. I have asked the question time and again in various parts of this country: "How many undeclared wars have we had?" I get figures all the way from 15 to 50; and even when I ask rather learned military men, they are always shocked when I suggest that the number is more than 190.

Almost 50 percent of these military actions lasted more than a month and well over one-half took place outside the Western Hemisphere. Though these undertakings have been questioned as precedents for full-scale, modern war-

fare overseas, they have in fact always involved whatever amount of force Presidents have deemed necessary to accomplish their national defense objectives. The military activities of the past 25 years cannot be omitted from this list simply because it would suit the purposes of those who challenge Presidential power. When these recent incidents, such as the Korean war and the Cuban naval quarantine, are fitted in which the military actions that preceded them, we can notice the development of a consistent line of precedents in which Presidents have always adapted the degree of their military actions to accord with the military technology and capabilities of the times. As the world we live in grew closer together and as scientific know-how multiplied, Presidents have acted in more distant places and with more effective weapons than they did before our Nation was so closely touched by foreign events or before nations possessed such advanced military hardware.

Another point about these 192 Presidentially authorized hostilities that we should notice is the fact that Congress has never once passed a law blocking or ordering a halt to one of them. The question has come up many times and Congress has taken many votes on the issue since the birth of the Nation. The fact that Congress has never before prohibited any Presidential hostility should be given heavy weight in reading the construction which history itself has put on the constitutional allotment of the war powers. For anyone to say that this long-continued arrangement may now be overturned by a sudden reversal of interpretation, demands that they should bear the burden of proving their case by far more extensive evidence than has been offered to date. Indeed, I believe the proponents of the pending bill have an obligation toward the country to open additional hearings on the subject so that a large number of the best constitutional and legal scholars can refine the record on this issue.

Mr. President, I know the sponsors of the war powers bill believe that the declaration of war clause, together with the necessary and proper clause, entitles Congress to set any rules it chooses in the war making field. But, as I have attempted to outline earlier, there are several eminent legal authorities who reject this view. No matter how often the sponsors repeat their claim that the power "to declare war" means the same thing as giving Congress the sole power "to commence war," this does not make it so. And, as for the power of Congress to act under the necessary and proper clause, I have just been given a report by the Library of Congress which concludes that this power has never been and cannot validly be used to limit the war powers of the President. Where the reliance of Congress upon the necessary and proper clause would help the President in carrying out his functions, the Library finds that Congress may act. But where the clause is relied on to restrict a constitutional prerogative of the President, the Library of Congress believes the action is unconstitutional.

Mr. President, I ask unanimous consent to have this report printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GOLDWATER. Mr. President, an identical position was taken by Dean Pomeroy in his commentary on the Constitution. He writes that any measures passed by Congress under the necessary and proper clause—

> Must be supplementary to, and in aid of, the separate and independent functions of the President as Commander-in-Chief; they cannot interfere with, much less limit his discretion in the exercise of those functions.

Thus, Mr. President, while I hear the assurances given by some of my colleagues that the pending bill does not interfere in any way with the President's powers, I must respectfully suggest that this is a self-serving analysis that is contradicted by the pertinent writings of many academic authorities on the Constitution. I believe the only safe and proper way we can resolve the issue is to refer the bill to a committee which is long experienced in treating deep constitutional issues of this kind, the Committee on the Judiciary. I shall certainly vote to help bring that about.

Mr. President, I do not intend to be interpreted as being highly critical of the Foreign Relations Committee for having voted this bill out. Earlier, I said that possibly the Armed Services Committee had an equal right to vote it out. I felt all along, and have so stated, that the Judiciary Committee is the only committee in this body that should hear and pass on any constitutional issue so important to our Nation and our Nation's position in the world at this present time.

I certainly hope that we can muster the votes in the Senate to do that.

The Committee on Foreign Relations heard testimony from only one professor who was critical of the bill, which is a grossly unbalanced list. The Judiciary Committee can redress that mistake.

There are at least nine, not one, academic leaders who have recently written against the restrictions on the President's war powers.

They are:

First. Prof. Bernard Schwartz.

Second. Prof. Dean Rusk, with whom I have conferred at great length on this matter, who has served as Secretary of State, who understands this problem thoroughly, and is completely opposed to the way we are going about this.

Third. Prof. Quincy Wright.

Fourth. Prof. Abram Chayes.

Fifth. Dr. James McGregor Burns.

Sixth. Prof. John Norton Moore, who had appeared before the committee. I heard this great international lawyer's interpretation of the high seas and insular seas questioned in the committee. The committee did not agree with him. I suggest that, in all deference to the lawyers on the Committee on Foreign Relations, that a lot more respect should have been paid to his opinions than just to brush them aside and say they did not agree with him.

Seventh. Prof. Henry M. Pachter.

Eighth. Prof. Henry Monaghan.

Ninth. Former dean of Harvard Law School, and now Solicitor General, Erwin Griswold.

Mr. President, this is a very important question, but I have received very little mail on it, frankly. I have queried around among my colleagues, and I find few Senators receiving any mail on the subject, which rather upsets the idea that the Nation is clamoring for this legislation.

Certainly, I believe that the Nation would like to hear and probably will benefit from this debate. It has been carried on in a proper manner. But before we decide that we are going to change the constitutional intent, before we decide that we are going to hamstring the President in his performance of carrying out foreign policy and in the protection of the American people, which is the No. 1 thing, I believe that this matter should receive far, far greater study and consideration in hearings than it has.

In closing, to point up the need for this, within 2 days' debate, the framers of this measure admitted there were three different areas in which they were mistaken, and they made corrections so that it might be a little more palatable to some of us who called their attention to the errors.

Thus, Mr. President, I shall join in voting to send this bill back to the Committee on the Judiciary.

EXHIBIT 1

THE LIBRARY OF CONGRESS
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 13, 1972.

To: Honorable BARRY GOLDWATER,
From: American Law Division.
Subject: Necessary and Proper Clause and Presidential Powers.

This is in response to your request for an analysis of the cases which might indicate whether Congress' power under the necessary and proper clause of the Constitution, Article I, § 8, cl. 18, extends to the degree that Congress might restrict and control the powers vested in the President. The necessary and proper clause, of course, has two aspects in that it authorizes Congress to pass laws to carry out the powers conferred in the previous seventeen clauses of § 8 and in that it further authorizes Congress "[t]o 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."

Thus, with regard to such proposals as the "war powers" bill, S. 2956, 92nd Congress, Congress could base its powers on both prongs of the clause. Its own war powers are conferred in clauses 11–16 and it may make a host of regulations governing the disposition of the military forces of the United States, such as the territorial restrictions on deployment of troops contained in the 1940 Selective Training and Service Act of 1940. 54 Stat. 885, 886. That this power could not be extended to infringe on the President's constitutional prerogatives would appear to be obvious. Cf. *Ex parte Milligan*, 4 Wall, (71 U.S.) 2, 139 (1866) (Chief Justice Chase). Line drawing here must, of course, proceed from an assessment of the division of the powers conferred exclusively and those jointly on the Congress and the President.

With regard, however, to the second prong, the Supreme Court has never had occasion to address itself specifically to the powers conferred on Congress by the second part of this clause. It has numerous times noted

that the clause does not confer any additional powers on Congress but simply makes express what would otherwise be implied, that Congress has discretion to execute the powers conferred. But these decisions have always been in the context of the clause as it relates to the "foregoing Powers." That the clause does confer additional powers on Congress is recognized in such cases as *Neely* v. *Henkel*, 180 U.S. 109, 121 (1901), and *Missouri* v. *Holland*, 252 U.S. 416, 432 (1920), both relating to the power to legislate to carry out treaty provisions, the power to enter into being conferred on the President and the Senate. In the former case, the Court said: "The power of Congress to make all laws necessary and proper for carrying into execution as well the powers enumerated in section 8 of article I of the Constitution, as all others vested in the Government of the United States, or in any Department or the officers thereof, includes the power to enact such legislation as is appropriate to give efficacy to any stipulations which it is competent for the President by and with the advice and consent of the Senate to insert in a treaty with a foreign power." Similarly, congressional authorization for extradition of persons to foreign countries has been based on its power to effectuate treaty provisions. *Valentine* v. *United States ex rel. Neidecker*, 299 U.S. 5, 9 (1936).

It seems clear that this second prong of the necessary and proper clause could not be relied on to invade a constitutional prerogative of the President. *Myers* v. *United States*, 272 U.S. 52 (1926), would seem to be the closest case in point. There, the Court was concerned with a congressional limitation on the removal of persons holding office in the executive branch, an office which Congress had created. Article II, § 2, cl. 2, authorizes the President to appoint "all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: . . ." Here is an express authorization for Congress to make laws to carry into execution powers vested in another department and Congress has exercised it from the first, not only creating offices, but determining the qualifications and the terms of the officeholders and prescribing other standards and restrictions. *Myers* v. *United States*, supra, 264–274 (Justice Brandeis dissenting). Nonetheless, in *Myers* the Court held that the removal of such officers from office was inherently an independent executive power lodged in the President and not subject to limitation by Congress. *Myers* has been limited and much of its dicta restricted by subsequent cases, *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935); *Wiener* v. *United States*, 357 U.S. 349 (1958), but this core concept remains viable.

It must be said that determination of power in this area—what is an independent executive power and what is concurrent—requires close analysis of the Constitution and of precedents. For example, in *Little* v. *Barreme*, 2 Cr. (6 U.S.) 169 (1804), the issue was the lawfulness of a seizure of a vessel bound *from* a French port under a presidential proclamation which authorized such a seizure and under a congressional enactment which provided for seizure only of such vessels bound *to* a French port. Holding the seizure invalid, Chief Justice Marshall said: "It is by no means clear that the President of the United States, whose high duty it is to 'take care that the laws be faithfully executed,' and who is commander in chief of the armies and navies of the United States, might not, without any special authority for that purpose, in the then existing state of things, have empowered the officers commanding the armed vessels of the United States, to seize and send into port for adjudication, American vessels which were forfeited by being engaged in this illicit commerce." But when it was noted "that the 5th section [of the Act of Congress] gives a special authority to seize on the high seas, and limits that authority to the seizure of vessels bound, or sailing to, a French port, the legislature seems to have prescribed that the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound to a French port." Id., 177–178. The seizure was, therefore, invalid. Here, the President was executing his foreign relations powers, which underlay and supported his neutrality proclamation and Congress was executing its power to "make rules concerning captures on land and water." Article I, § 8, cl. 11. A similar conflict apparently explains the result in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952). Although Justice Black in the opinion of the Court explained that the power to authorize seizures lay with Congress and could not be exercised with authorization, at least four of the six Justices in the majority seemed more interested in the fact that previously the President had seized industrial property under the war powers but that now Congress in the Taft-Hartley Act had specified a procedure of settlement which impliedly negatived seizure as an alternative.

In short, the Court has not spoken much on the second provision of the necessary and proper clause. *Myers* indicates that there is an area of presidential power Congress cannot restrict under that clause, but the contours and boundaries of that area are unclear.

JOHNNY H. KILLIAN,
Legislative Attorney.

Mr. HRUSKA. Mr. President, will the Senator from Arizona yield?

Mr. GOLDWATER. I am happy to yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, first of all, I want to commend the distinguished Senator from Arizona for the splendid statement he has made. I also want to thank him for his expression in support of the motion which was made to commit this measure to the Committee on the Judiciary, a motion which I made in conjunction with the senior Senator from North Carolina (Mr. ERVIN).

I was especially attracted, during the course of the Senator's remarks, to his reference to the number of scholars who are available, as well as writers and outstanding authorities on the Constitution and on international law, who have not had an opportunity to testify on the bill. The Senator is right. There were only two professors of law who were called upon to testify during the hearings on S. 2956. One of them was professor of law, Alexander M. Bickel, of Yale, who testified for the bill, and the other was Prof. John Norton Moore, professor of law at the University of Virginia.

Now then, when as eminent an authority as Prof. Eugene V. Rostow writes as recently as only yesterday in the New York Times as follows:

> Congress has made no bid for supremacy so bold, and so foreign to the Constitution, since the impeachment of Andrew Johnson. The legal theory of the bill would permit a plenipotentiary Congress to dominate the Presidency (and the courts) more completely than the House of Commons governs in Great Britain.

And in the concluding paragraph of this article, he says:

> The Javits bill would turn the clock back to the Articles of Confederation and, emasculate the independent Presidency it was one of the chief aims of the men of Annapolis and Philadelphia to create.

Does it not impress the Senator from Arizona anew with the scarcity of legal authority on that subject, having had only two professors of law testify out of that list of great and eminent scholars in this field enumerated by the Senator?

Mr. GOLDWATER. Mr. President, I could not agree more with the Senator from Nebraska. In fact, looking at the list of witnesses who testified in the hearings, there are nearly three pages of people who testified or submitted statements. I have not counted them. However, the list includes Senators who are lawyers, Senators who are not lawyers, some academicians, and some lawyers from outside Congress; and I must say the list is not fairly reflective of the actual division among scholars in this field.

This is one of the things that disturbs me. I might add that in studying the history of this whole problem, one comes back to the early days of our Republic. In fact, I doubt if we have ever spent a year without having the problem.

I have been impressed with the outstanding scholars, outstanding lawyers, and outstanding academicians who have always said, "Let us leave it alone."

When I first got interested in this, I wrote a large number of people—former Secretaries of State, former Attorneys General, and deans of law schools. Most of these people would never agree with Senator GOLDWATER in his philosophy. Yet I did not receive a single letter from any of these people that did not say, "Don't take the legislative route. In fact, don't take any route."

I asked in my letters whether we should amend the Constitution in order to do this. Not one of them said to do it that way. It was unanimous. They said, "Leave it alone." That was the unanimous reply from Democrats, Republicans, liberals, and conservatives.

I think that we would be making a dreadful mistake not to make available to ourselves a far greater source of expertise than we have so far.

I repeat that the very fact that the sponsors of the measure, within 2 major days of debate and after only two of us had spoken, had to come forth with perfecting amendments.

If this legislation had been prepared in such depth as the authors would have us believe, I would suggest that there would be no need for perfecting amendments. As I said when I spoke before, they could amend the hide off this thing and it would not be palatable to me. The only thing that would make it palatable to me would be to send it back to the Senate Judiciary Committee where we could hear some indepth and balanced intelligence on the subject.

Mr. HRUSKA. Mr. President, the Senator agrees with such eminent scholars as Charles Evan Hughes, one of the great Supreme Court Justices, when he said in 1917:

> The prosecution of war demands in the highest degree the promptness, directness and unity of action in military operations which alone can proceed from the executive. This exclusive power to command the army and navy and thus direct and control campaigns exhibits not autocracy but democracy

fighting effectively through its chosen instruments and in accordance with the established organic law.

Then there is the commentary by Dean Pomeroy when he writes that any measures passed by Congress under the necessary and proper clause "must be supplementary to, and in aid of, the separate and independent functions of the President as Commander in Chief; they cannot interfere with, much less limit his discretion in the exercise of those functions."

Is that not a sufficient red flag of danger and a significant kind of signal to warn of danger by way of impairment or violation of the Constitution which should lead reasonable men to say, "Let's explore these statements in the light of the best legal talent, in the light of lawyers instead of in the light of testimony of political science professors, as talented and as fine as they are, not just in the light of the testimony of historians, as fine as they are, but in the light of legal scholars who are available for testimony in a public forum." It is my contention that the appropriate public forum is the Senate Committee on the Judiciary. That is its assigned duty. That is the proper committee established for this purpose.

Mr. GOLDWATER. Mr. President, I would agree with the Senator. I might pursue his argument a little further. We have been reminded and have been told constantly on the floor that to allow Congress to make war is a democratic process. I suggest that the Founding Fathers very early gave up that basic concept of pure democracy where everyone met in a room and the fellows who walked out alive had won the argument.

We have a democratic-republican form of government, small "d" and small "r." It just happened that the parties eventually came up with those names.

Now under the republican-democratic form of government, we have the men who have been chosen by the people to represent them. They did not choose us because we were particularly adept at determining what war should or should not be waged. They did not choose us because we had any military expertise. I do not think there has ever been a man run for Congress, at least in my time, that ever campaigned on the idea that, "I can fight a war better than the other fellow can fight a war."

We have always recognized that the President has this power to decide on the national defense. And I maintain that he still has the only power to go to war in protection of American liberties. And if the people do not like it, then let us give the people of the United States a chance to amend the Constitution. But let us not try in this body of some 500 people to take over the chores of going to war. Any delay in action when action is apparent is certain defeat.

We are losing the war in Vietnam because we dilly dallied and could never make up our minds whether to act like an army, a navy, or an air force or whether we were going to satisfy the voters in Los Angeles, Chicago, or Timbuktu.

As a result, we are faced with a debacle in a war directed by civilians who know nothing about the operation of an army, navy, or air force.

What would happen to our country if we were forced to put the question to Congress as to whether we should attack? I have often said publicly that one of the chief troubles with South Vietnam is that we do not have enough South Vietnamese living in America.

I can see this becoming a hot political issue. Are we going to war to save the Italians? I would say that we would. Are we going to war to save Israel? I would say that we would, whether we had to or not, because of the political pressures put on this body.

I have often said that I would much rather leave the judgment in running a war to one man who has to live with it than to leave it in the hands of 500 or more men who have to do something about it in order to get reelected.

I want to read one further thing on this. The Senator has mentioned Dean Pomeroy. I would add that Dean Pomeroy also wrote in his textbook on constitutional law that—

> The President may make all dispositions of troops and officers, stationing them now at this post, now at that; he may send out naval vessels to such parts of the world as he pleases; he may distribute the arms, ammunition, and supplies in such quantities and at such arsenals and depositories as he deems best. . . .

Pomeroy continued:

> [A]ll direct management of warlike operations, all planning and organizing of campaigns, all establishing of blockades, all direction of marches, sieges, battles, and the like, are as much beyond the jurisdiction of the legislature, as they are beyond that of any assemblage of private citizens.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. GOLDWATER. I am happy to yield to the Senator from Kentucky.

Mr. COOPER. I hope the Senator will agree to the statement I am going to make. I believe we are talking about two things, two courses of action. One is the conduct of the war after the war is commenced. The other proposition relates to our entrance into hostilities.

I would agree with the Senator that once our country has entered the war that it is the constitutional function of the President of the United States as Commander in Chief to conduct the war. I know of no constitutional way by which Congress could direct or control war after it has commenced except by denying the funds to support the war.

This bill deals with the other subject, not the conduct of the war after it has been commenced, but with entrance into war.

The bill lays out that in certain cases the President, without question, has the authority under the Constitution to enter into hostilities to protect our troops against a sudden attack, or to protect our country, or its possessions against a sudden attack, and, if necessary, to be determined by the judgment and discretion of the President, to enter into hostilities in order to forestall an attack which to him appears imminent, again, to protect our country, its people, and its security.

I think there is no doubt about these considerations. I believe the Senator agrees with me on that. But, when we try to evaluate what would happen when there is no attack upon our troops, when there is no attack upon the soil of our country or its possessions, and when there is no attack on our troops even though they are in a foreign land or on the seas, I contend that the decision to enter hostilities lies with the President and the approval of the Congress.

Would the Senator say, in these circumstances the President should have the authority to engage us in war without the approval of Congress?

Mr. GOLDWATER. In answer to the Senator's question, I would say yes. He not only has it; he has had it without any question for nearly 200 years when it is exercised for the defense of national interests, whether the threat is tomorrow or is one that may be more distant. I do not believe an attack necessarily has to be made upon the Continental United States to put us in a predicament of war. In fact, the United States has not been attacked since 1812, except for Hawaii in 1941.

We have gotten into wars all over the world, not necessarily by Presidential desire but because it became obvious that if we did not go to the aid of our allies, our country's freedom and its people would be threatened.

In cases like the world war there is no argument. We talk about sending troops, let us say, to Guatemala. The Senator might say, "What effect does Guatemala have on the United States?" This is a decision the President has to make. I do not think we are equipped to make it.

Then, we would tie the President's hands by saying, "Fine. You have the power to direct troop movements, but after 30 days Congress is going to take a look at this and say whether or not you are right."

My basic argument against that is that we are going back to the days of Washington and the Confederacy when the Revolution was actually prolonged because of bickering in Congress, just as I feel the war in Vietnam has been prolonged by the confusing statements that come from this entire Congress, prowar and antiwar. I think it leaves our enemies in a situation questioning whether or not we are sincere, questioning whether or not we are ready to give up, and whether or not we are going to fight.

I keep remembering the classic remarks after Dienbienphu fell. The remark was that Dienbienphu did not fall to the enemy; it fell at Paris. This is what I am afraid of.

The President could go to war in defense of the Nation against a direct and imminent threat or an actual attack at least, we are not changing that in this language. I agree with that. But a political situation could develop in this country that could be developed by the press, which I have to say is becoming increasingly the creator of issues.

I do not think that Representatives and Senators create issues. It is what Walter Cronkite wants the people to believe or what Eric Sevareid wants the people to believe. How long would it take

to stir up an "anti" feeling in this country to a war the President felt he was right going into, to the point where Congress would say, "We do not need this war, and let us stop it." This is what the bill provides for. We will begin to lose allies and friends all over the world.

I get back to the Senator's question. I agree that the basic problem we are faced with in the Chamber is two words: One is "make" and the other is "declare."

Those of us who hold the contention that Congress has the right to declare war but only the President has the right to make war are confronted with those who say that declare and make are the the same thing.

In studying the Constitution it becomes obvious to me as a student of history that Congress knew exactly what it was doing when they changed the word "make" to the word "declare." It is for this basic reason I think we are treading on dangerous ground. With all due respect to the legal minds in the Chamber and in the Committee on Foreign Relations, their major job is not in this type legislation, where the major job is more appropriately one for the Commitee on the Judiciary to be thoroughly studying all the constitutional and separation-of-powers ramifications of this matter which the Foreign Relations Committee has not done.

The American Bar Association has begun studying this matter, and we understand that in about a year that leading group of lawyers will come out with an opinion, and it makes us in comparison look foolish trying to decide in 1 week that for 200 years we have been interpreting the Constitution wrong. I hope that answers the Senator's question.

Mr. COOPER. I have listened to a great part of the Senator's speech and it was a scholarly speech. He has made a great contribution to this debate.

Following World War II the debate began on this issue. Our country was very much united and there was little disagreement about what the President could or could not do. But I recall that during the Korean war questions arose about its legality. President Eisenhower, as a candidate said that he would attempt to bring that war to an end, and he had a great deal to do with its ending.

I recall the post-World War II treaties on the floor of the Senate. Many Senators raised the question as to whether the President could go into war as a party to the treaties, without coming to Congress. Curiously enough, some of our citizens who support this bill so strenuously argued the very opposite in those days, saying we should not interfere with the President.

My position is the same as the one I held in 1954, when we argued the question of the meaning of the term "constitutional processes" under the United States-Korea bilateral treaty. Senator Watson of Utah, Senator STENNIS of Mississippi, and I argued that it meant the President should come before the Congress.

I will summarize. I think it is clear that once we are engaged in war, only the President as Commander in Chief can command our forces and direct them.

I did not agree with the 30-day period in the pending bill. In writing my individual views, I said I did not think it was constitutional. But an amendment has been approved by the Senate which has changed that section. It provides that the President, can be relieved of the 30-day restraint if he reports that military necessity requires continued action.

One of the important reasons for our entrance into the Revolutionary War was the challenge to the authority of George III to decide when the Colonies could be used in war. Other monarchs have done the same. Napoleon, time and time again, bled France white, until he was defeated at Waterloo.

The purpose of this bill—the President can assert his own constitutional right—is to limit the possibility of war, and I see nothing wrong with that. I say this with due regard to my friend from Arizona. I know he was involved in this question in a very—I will not say bitter, but in a very tough way in 1964. I recall that campaign, in which he made statements which later proved to be true.

Mr. McGEE. Mr. President, will the Senator yield?

Mr. GOLDWATER. I shall yield to the Senator from Wyoming in a moment. First let me say I believe everything we are saying here on the floor today indicates more and more the need for a real, deep study in this field. I know what the authors of the bill want to accomplish. I have to say I am in accord with those purposes. I am in argument with the method. But it is certainly becoming more and more obvious that when a man on this side, who is an expert lawyer, who is supposed to know the Constitution, will argue with a man on the other side, who has equal respect in the law—I do not expect lawyers to agree any more than laymen agree, but this is on a constitutional matter—I think we are getting into a grave problem. Certainly, it should be considered with more attention to legal issues.

I yield now to the Senator from Wyoming.

Mr. McGEE. Mr. President, first I want to say that my colleague from Arizona has contributed a great deal to the thoughtfulness of our approach to this question. He has been involved in this question very deeply now, almost from the beginning, starting with the committee hearings, and even before, in some cases; but I think it is important that we continue to spell out for the record the history that shows the doubts people are raising. They are not people who are united by a common ideology in the political sense or by a common philosophy in the conservative-liberal sense. They are people who are genuinely concerned about what is happening in the world, what can happen in the world, and what all of this has done to our constitutional structures that go back almost 200 years.

I would like to put in a plug, however, for the political scientists, the constitutional historians, lest the remarks of the distinguished Senator from Nebraska be lifted out of context by some casual reader and misconstrued. I think I should make the point that the constitutional historians—the people in my profession before I came to the U.S. Senate—are split wide open on this matter. They are astute. They understand the Constitution. They understand the constitutional principles, but their arguments differ at this stage as to what we ought to do.

The same thing with the political scientists. There is a tendency to believe that scientists are more definite about matters than others, but their own ranks show that they are less scientific on this question than they could be. They are divided.

Many of the people with no flag that one could attach to them, or perhaps even a red flag—perhaps we should not use the term "red flag" as a warning because of some other connotations that may be applied to it—but some of those professors have something to say about it. A few have spoken out—very few—but the voices that have been heard are divided voices even now.

This all comes back to my point. I think there is merit in the proposal we are being asked to take, namely, to refer this measure to the Judiciary Committee. Now, I do not happen to think that the Judiciary Committee is any wiser than any other committee of this body, but it has something to say from time to time in these matters. However, I do think the constitutional issue that lurks in the question of the pending legislation does warrant an assessment of this issue through that committee process. I would agree that we do not have to assign it to the committee. We can refer it to the committee, as the Senator from Nebraska proposes, with a time certain to report back.

I think all of us in this body would look better if we had gone through that process, because here is a group which, while no brighter than anybody else, has the assignment to spend more time sorting this question out than the others of us have time to do.

For that, reason, there is real merit in the proposal. and I think Members of this body would do better, to have that group take an individual position on this matter, because this is a Senate process and we have a group here who has a responsibility to go into this question in great depth. And we need the benefit of their judgment.

We do not need to delay action. This has been going on a long time now. I think a reasonable opportunity for that group to go into the matter would be in order so it would give us a positive conclusion. We would still have a chance to read it and then judge whether the Judiciary Committee made a contribution or not. I think we are entitled to have it, look into it, and give us that judgment and then see where we ought to proceed further.

What I wanted to say to the Senate was that what we are coming down to more and more on this whole question is the diversity of judgment, and most of all the doubts that this procedure is wise. It is not a certainty, because in these times the luxury of certainty has been dispelled for almost all of us. There are a few who are very certain in these days,

but not very many. Certainly is one of the luxuries of the dark ages that we can no longer indulge in. By "dark ages" I mean in my youth, in the 1930's, when I was sure of a great many things that I have had to change my judgment on. That lack of certainty, the margin of sincere, honest doubts, ought to be saying to everyone here on this question, whatever else, we ought to make haste slowly. We ought to do it the right way the first time, if we can.

That something ought to be done is likely the case, and that is why my proposal, no matter what we decide here, whether we pass the Javits' proposal or we do not, we ought to create a full presidential commission to reexamine the relevance of these anxieties in relation to the Constitution and our presently accepted processes in decisionmaking.

So I want to commend the Senator for having spelled this out with great care and thoughtfulness.

Mr. GOLDWATER. I thank the Senator, and reiterate what I have told him, that I feel, regardless of what happens, whether we refer the matter to the Committee on the Judiciary or not, but particularly if not, something like the Senator's amendment should prevail, which would set up a board of expertise, out of politics, to really look into this question.

The distinguished Senator from Wyoming mentioned that this debate knows no political sections. Let us examine that point. The author of the bill, the Senator from New York (Mr. JAVITS), is a liberal Republican. The Senator from Texas (Mr. BENTSEN) is a conservative Democrat. The Senator from Missouri (Mr. EAGLETON) is a moderate, in my judgment. The Senator from North Carolina (Mr. JORDAN) is a conservative. The Senator from Virginia (Mr. SPONG) is a former lecturer at a law school, and a very noted authority in his own right. The Senator from Mississippi (Mr. STENNIS)—I guess I stand to the left of JOHN STENNIS; at least some people think I do.

Then there is the Senator from Ohio (Mr. TAFT), whose father, God rest his soul, was Mr. Republican.

So, indeed, this debate knows no political bounds, but it does demonstrate a great deal of confusion. When you can have a former professor of law disagreeing with a present professor of law in Georgia, Dean Rusk, I think something has got to be done, not to bring them together, but to find out where we are going wrong. I honestly feel that the passage of this legislation could bring nothing but chaos to this country—not internally at the moment, but in our external relations. I think we would disrupt them completely with one single blow.

Mr. HRUSKA. Mr. President, if the Senator will yield——

Mr. GOLDWATER. I yield to my friend from Nebraska.

Mr. HRUSKA. Are there not really two propositions involved in the consideration of this measure? One could be said to be in the field of the political scientist and the professor of history, who would look at the situation from the standpoint of the desirability of having this power vested in the President to be in command of and to deploy troops, and to engage in the location of those troops in various places in the world—as I say, the desirability of it.

The other question would have to do with how that desire, as embodied in the pending measure, to reduce the chance of war, to reduce the chance of escalation of war, which is supposed to be the objective of the bill, can lawfully be attained.

There is no question but that the President has the power. The Constitution itself is very clear. Beyond that, we have had almost a 200-year history, in which some 192 examples of the allocation and deployment of troops have occurred; and while that does not prove the constitutionality, it has a great bearing, as I pointed out in my principal remarks earlier today. The practice under the Constitution for more than 200 years pretty well entrenches that power.

Then the question arises, that power being in existence, how can it be changed? How can it be denied? How can it be restricted? How can it be limited?

It is our way of thinking in this country that to change a constitutional power will require a change in the Constitution; but I believe that this body, if it approves this bill, is going to say, 'No longer is that true; these are enlightened ages, and we are going to have the voice of democracy, through a legislative act, modify that Constitution."

Mr. President, that cannot be done under our present system of government. There is no question but that this power exists. It has existed and has been exercised ever since George Washington's time. If we are going to make a change in that, let not Congress have the effrontery and the arrogance to say, "You can use that power, but not for more than 30 days without consulting with us and getting our blessing and approval."

That would amount to an amendment of the Constitution; and there are only two ways the Constitution can be amended, one by State conventions, and the other by action of Congress and referral to the States.

That linkage is not here. And I do believe that if this bill is referred to the Committee on the Judiciary, this point of how a power conferred by the Constitution can be changed or limited will be properly set up in focus, so that it can be understood for what it really is. That cannot be achieved by the type of testimony we have here, notwithstanding the hopeful desires of many sincere people that this bill is designed to lessen the risk of war, that it is designed to prevent the escalation of situations into war, or whatever else the objectives may be. That is not the point. The point is, how can it be done?

Mr. GOLDWATER. I could not agree more with what the Senator from Nebraska is proposing.

Mr. McGEE. Mr. President, will the Senator yield?

Mr. GOLDWATER. I have finished; I shall be happy to yield the floor.

Mr. McGEE. I do not want the floor. I have no desire to make a speech. I just wish to comment on the relevancy of what the Senator has been saying, because the Senator from Arizona raised a point, in his colloquy with the Senator from Kentucky, that I think ought to warn us in another way, when he referred to the misgivings that emerged among many of our countrymen at the time of the Korean conflict, and that those misgivings were expressed very loudly.

That is understandable, for the reason that times had changed once more; it was a new circumstance. We found ourselves in a position we had never anticipated being in, and that ought to have said to us, even then, "Let us get busy and reexamine this whole process, and see if we are really out of date, or if we are up to date but ought to do it differently under the present structure."

But we did not do that. It is easy to say now, with hindsight, that we should have.

I have read with great satisfaction several times over the past few years a very brilliant exposition on this very question, "The Powers of the President in Foreign Policy," which appeared in the Cornell Law Review of October 1960. It is a brilliant piece, written by a real scholar and expert in the field.

What it said was that if we are worrying about making foreign policy, we ought to go slowly about dumping that function in the laps of the Senate of the United States. The author said he hated to say that, because he was a Senator and did not want to impugn the Senate, but he said that most Senators do not have time to devote full attention to these problems that require a decision, and that while he did not like to give power to one man, his conclusion was that, reluctantly, he had decided we were going to have to give the President of the United States more power in foreign policy decisionmaking, crisis decisions, and so on, if our form of representative government was to survive.

The author of that article was the present chairman of the Committee on Foreign Relations, the Senator from Arkansas (Mr. FULBRIGHT). As I say, it was written at a cooler moment, at a calmer time, before all the emotions of the last decade had muddied all our waters, involving every one of us.

But, having been written when it was, I think it ought to be required reading for every Member of this body before he makes up his mind on this question. It was written at a time before personalities and personal pique had taken over, before so many of us who are here right now had tuned out on meaningful dialog, which I hope we have now begun to tune back into, because of this question.

Now the distinguished chairman of the Foreign Relations Committee has changed his mind. I respect a man who has changed his mind, because he has the courage to say he thinks he was wrong back in 1960, and thinks he is right now. That is very important, because a man who cannot change his mind is in a rut, and may be guilty of having chained himself to an irrelevant past.

But I do not think that ought to close out the relevance of what was developed in that excellent article in the Cornell Law Review, which simply said that this

is a complex, difficult, and sometimes ugly question that we are going to have to resolve more wisely than we have until now; and I think that it should be must reading for all of the Members of this body.

It is that that makes the point; namely, that here, again, there is a change of mind, there is a divided judgment, there is an uncertainty as to what ought to be done, even by some of those who support the pending amendment. Certainly, there are misgivings and yet there is some inclination on the part of people such as the Senator from Wyoming who think that this, at least, is the better of the proposals that were made before the committee, that it comes closest to trying to do something realistic without getting too far off a reasonable path in seeking some wiser solution than we have at the present time. But I think that these misgivings on both sides—on all sides—ought to warn us to go slowly, ought to say to us, "Let us take the time to make the next step a telling one, as well as a wise one."

I do not think that anyone here today or who has been here in the course of the debates can stand here with confidence to say that this is the step that will hold in balance the wise course of American foreign policy into the crisis fields of the future. In fact, I think they lean over backward, in due humility, in saying that they do not know, that they are not sure, that they would not make that contention; and that is the reason why we ought to pursue more cautiously the whole question.

Mr. GOLDWATER. The Senator has pointed out one thing about the weakness of our system in the Senate—the committee system. We are living in a world today in which in most cases the expertise on foreign relations goes back hundreds of years, and in some cases thousands of years, where men are literally born into the profession, educated in the profession; and here we have a committee system that gets its members from the standpoint of seniority.

I look at the register of the Committee on Foreign Relations—I may be wrong—and I see the Honorable JOHN SHERMAN COOPER as the only man who ever has served in any capacity that could make him, in my opinion, an expert in foreign policy. He served as an Ambassador. I do not negate the expertise of the others. I do not think the chairman ever has been to Vietnam. I do not say that he should go to Vietnam. But we are handicapped in this body by the seniority system.

Let us say we had a former Ambassador to any court in the world. It would take him at least one full term to get on the Committee on Foreign Relations, and that is where he could do his best job.

Mr. McGEE. I hope the Senator would be more modest about the seniority system. I was one of the first critics of it. But I think the longer one is around, he tends to get more mature judgment in regard to it.

Mr. GOLDWATER. I am the oldest freshman Senator on the floor. I have come up the hard way twice and have gone down the hard way once. [Laughter.] And I do not intend to do it again.

I am not criticizing the Foreign Relations Committee. I am trying to point out what I think is a weakness in our system.

With respect to the Committee on the Judiciary, we are not saying that these men are expert in foreign policy; but they are dedicated lawyers whose sole interest in life has been the law. Perhaps Jefferson was right when he said there were too many lawyers in Congress. I have not made a judgment yet. But certainly the Judiciary Committee is where this matter should be heard by men whose lives have been spent in the study of law and the interpretation of it.

Mr. President, I yield the floor.

Mr. COOPER. Mr. President, before I make a short statement on another matter, I rise to say that I believe the Committee on Foreign Relations is well constituted for the study of the question of war powers. The work of the committee primarily deals with our relations with other countries, and for several years it has been examining hearings and from testimony, reports and briefings by the Executive, and by legislation it has reported to the Senate, the exercise of war powers by the Congress and the Executive. I must say that I believe that Senator JAVITS, his cosponsors and the Committee on Foreign Relations made a thorough study before reporting the pending bill.

Mr. President, I understand there was a short discussion on the floor today concerning the recent movement of North Vietnamese forces into South Vietnam, and that there was criticism of the President of the United States.

It has been said that perhaps the stimulus for the invasion arose, because some days ago the President of the United States, through his representative in Paris, Ambassador Porter, notified the North Vietnamese negotiators and those representing the Vietcong that the United States would not engage in further negotiations unless the North Vietnamese and the Vietcong showed willingness to negotiatie substantively. I must say that I dc not think that the argument has any substance at all.

Some Senators may recall that for a period of 3 or 4 years—I would say 3 years—I spoke again and again on the floor of the Senate urging the United States to cease the bombing of North Vietnam. The purpose of the speeches I made was that I believed at the time that if the bombing would cease, the United States could enter into fruitful negotiations with the North Vietnamese and the Vietcong and reach a peaceful settlement of the war in Vietnam and Indochina. That is still my hope. The representatives did meet after President Johnson announced that the bombing of North Vietnam would stop. They met formally, but I do not believe any substantive negotiations ever took place, except those in which Dr. Kissinger engaged privately, at the direction of the President of the United States.

I visited our chief negotiators in Paris several times. I recall talking with former Ambassador Harriman and his associate, Ambassador Vance, and both told me there never had been any substantive negotiations at the time of their service.

I visited Ambassador Lodge when he was the head of our negotiators, and he told me that there never had been the slightest semblance of any negotiation by the North Vietnamese.

I visited Ambassador Bruce and he told me the same: That the meetings were useless; there never had been the slightest evidence on the part of the North Vietnamese and the Vietcong of a willingness to negotiate.

I talked many times with Ambassador Habib, who served under all these Ambassadors. He said there never had been a semblance of any evidence on the part of the North Vietnamese to negotiate with our representative in Paris.

I asked him about the American visitors who traveled often from the United States to Paris, some from our body and some from the other body, who had returned to report that the North Vietnamese were ready to negotiate. He told me that it was a tactic of the North Vietnamese—to give such information to those they talked with from the United States—but when the negotiators went back to the negotiating table, there was nothing—agreement at all on the part of the North Vietnamese.

I believe the statement that the offensive is related to the President's statement has no basis.

In fact, information indicates that for several months the North Vietnamese have been building up their forces in North Vietnam, above the DMZ, with large concentrations of infantry, supported by the most modern weapons, moving over roads which have been constructed over a period of months, to facilitate an offensive into South Vietnam. The fact that three separate entries were made, one over the DMZ, one from Laos into South Vietnam, and one from Cambodia into South Vietnam, engaging between 75,000 and 100,000 men, indicates, of course, that this offensive was planned for some time and that it was a coordinated and skillful military initiative.

Now, Mr. President, I have spoken of the efforts that the President made to negotiate through Dr. Kissinger. When the President was attacked over a period of months by those who said he was not attempting to negotiate, then the President felt that he had a duty to say publicly that there had been private negotiations and to disclose the points which had been made.

After that was done, a barrage of criticism was unleashed upon the President by some of those who had been calling for negotiation, and by others who had developed the policies which led us into this war.

Mr. President, my views on this war have not changed. As I said a few moments ago, I have probably spoken more than any other Senator in this body, constantly, over a period of years, advocating the cessation of bombing. I have offered, along with others, several amendments in the Senate to attempt to

control the war or to prevent its expansion. Some were enacted and some were defeated. I have said, under all of the circumstances we have faced, that I thought the best policy for our country was to withdraw.

But I do want to make the point today, that we have to address ourselves to reality; namely, that it is the North Vietnamese who again have thrust a powerful force into South Vietnam. It has been said that there was an understanding they would not do this, and I believe it; but I will not argue it further. The point remains that they have thrust strong military forces into South Vietnam through three avenues within a week.

Mr. President, I do not like to dwell upon the past, for this war began a long time ago, 10 years ago, and was escalated steadily, but President Nixon has reversed the policies of the past administrations. There are those who oppose his program—and I have disagreed with it on some points; but the chief point is, that President Nixon has reversed the policies of past administrations and the Congress—policies which engaged us in hostilities and which escalated the war.

The issue today is that North Vietnamese military forces, perhaps 75,000 to 100,000 men, armed with modern tanks, with the latest modern self-propelling artillery and protected by Soviet surface-to-air missiles, trained by the Soviets and the Chinese, have invaded South Vietnam. It is a very serious situation, not only for South Vietnam, but for the safety of U.S. forces.

Most of us have served in the Armed Forces in various capacities, but with less modern equipment than is used today.

The Battle of the Bulge in World War II, in 1944, was not unlike what we are witnessing in South Vietnam today. It comes to my memory, although I was not in the battle. I was on its flank when a German force attempted to break through the Allied lines. If the North Vietnamese assault is not halted, it could move deeply south and endanger the American forces that remain in Vietnam.

So, for the protection of our forces—and I am not one who wants to see the bombing extended—but for the protection of our forces because a few weeks extension of the North Vietnam offensive could mean bringing them into grave danger. I believe that the President is authorized to do what he is doing.

I know that it is difficult in this political year to be calm, but I do believe that we can show restraint, that in the next 3 or 4 weeks, which may be the critical weeks, not alone for South Vietnam which has been attacked, but also for the safety of our own forces, I would hope that we would be very responsible in what we have to say, until we will know whether the assault will be wholly successful, and thus endanger our American forces, or will have been turned back.

Mr. McGEE. Mr. President, would the distinguished Senator from Kentucky care to yield?

Mr. COOPER. Yes, I am happy to yield to the Senator from Wyoming.

Mr. McGEE. Mr. President, the distinguished Senator from Kentucky is in a superb position to paint for us the needed reminder of the big picture that is present here, rather than the headline events from day to day. The Senator has ably reminded us that this North Vietnamese offensive did not happen this week or the week before, but that it was a cumulative sort of thing which we have to judge in much larger terms than the convenience of the day's excitement. The Senator has made a significant contribution by injecting this sense of perspective about the President's decision right now.

I would want to say, as a member of the opposition party from the administration, that I support the President in this move. I believe that it is very likely a necessary move on his part. But what is more important, I think, is that more and more of us should drop out of the business of trying to play Secretary of State or President of the United States.

One of the things our Founding Fathers learned the hard way, during the colonial period of our history, was the folly of having too many heads thinking they were running the show. It had nearly destroyed the 13 colonies by the time the Founding Fathers got together in convention and decided to draft a form of government that they hoped would guide the young new Nation for many years to come.

The one thing they stressed was the need for speaking with one voice in foreign affairs. Therefore, they reposed with the President of the United States that awesome responsibility. That is the way it was structured into the Constitution.

Again, I would wish that more of our people would review a little of our country's history. They do not have to listen to the rhetoric of Senators here, but let them read their own history and remind each other once again of the kind of reckless games we play every time some newly, self-appointed "Secretary of State" wants to run to Paris or to Hanoi to tell us how we should be doing things.

There are many ways in which it would be possible to do these things, but we cannot do them all at the same time without destroying ourselves.

That is why the President has that responsibility and that is why I think we should slow down.

Even though this is a political year—in fact, perhaps, because it is a political year—we should take this latest move by the North Veitnamese in much lower key than we are taking it at the present time.

I would have to say, on behalf of the President, that I cannot imagine a President up for reelection wanting to continue a war.

I cannot imagine a President who is contending for another term wanting somehow to play some Mickey Mouse game in which he might succeed in keeping the country involved in war. Before he is a candidate for reelection, he is the President of the United States of America. And he has to respond as President regardless of the consequences for his candidacy.

I would hope that this President, or any President who followed him, would continue to respond to that kind of demand. With this crisis we are going through in Vietnam, President Nixon has taken on grave risks in one political sense of the word. But I think it is the kind of risk that a man in the White House has to take as President.

I think the record is absolutely clear. I am wondering a little about so many of our own people who beat so hard over the head the many facets of the doubtful things that have to go into decisionmaking on Southeast Asia. None of it is easy. Most of it is 50–50. But no President has the luxury of saying, "We will do it half and half." It is either "yes or no; do it."

We ought to be more understanding and more sophisticated and a bit more restrained as individual constituents in this great country of ours toward this heavy, burdensome responsibility of a President of the United States.

Surely all of our recent history ought to give pause to those who are otherwise quick to condemn and criticize. I suppose that with regard to the Tet offensive many historians have already begun to write very eloquently—and indeed they have—and will submit for the history books that the Tet offensive was a very substantial military turnaround and that the other side, the North, Hanoi, was fractured almost irretrievably in that conflict, although one would never get that impression from our dialog here at home, because we had a lot of Monday morning quarterbacks and Saturday night presidents. Every man is his own president. That is a great luxury in a presidential year, because one does not have to take the consequences for what he says. But there is one man who has to.

It was Harry Truman who reminded us that "The buck stops here," at the desk of the President.

The President does not have the luxury of saying one thing one day and chaging it another day when circumstances change.

That is the reason that I want to echo what the distinguished Senator from Kentucky (Mr. COOPER) has said with regard to this matter. The very least we should do is to suspend our judgment, hold our reaction, and see how this is coming along.

We know a great deal about the events concerning the last year or the last several years of negotiations. We know that not only have we gone the last mile, but that we have also gone many miles and have attempted to lean over to try to find a basis for at least a detente, if not a peaceful settlement. And each time it has produced nothing.

It is so conspicuous now that the time is low profile. The last 3 or 4 or 5 months have been utilized by the other side to marshal new forces for another significant strike. Whether that strike is a tactical maneuver or a strategic one remains to be seen. However, I do not think that we have any reason or right to jump off halfcocked this week or the week ahead over what it means for sure.

I think that all we would do if we were to choose that kind of reckless conduct would be to jeopardize the chances of any meaningful American policy and leadership to try to effect a peaceful settlement

somewhere along the line. We have almost, in a sense, become our worst enemy. And I think that it ill behooves us to aid and abet those who would hope that we might fail.

So, as a member of the other party, I submit my position for more restraint and for more understanding. And whatever happens with the 60-second popoffs about every new line that comes across the ticker tape in the cloakroom, that is not the way to run the store. And it sure as the devil is not the way to pilot a ship of state.

We ought to be more responsible.

Mr. GOLDWATER. Mr. President, will the Senator from Kentucky yield?

Mr. COOPER. Mr. President, I yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I want to take this opportunity to express my great admiration for the Senator from Kentucky. We do not agree on a lot of things. We have disagreed on this war. He has spoken more often and longer on his personal belief that the war should end than has any other Member of this body.

I have expressed my belief. Our beliefs run contrary in that regard. However, a characteristic of the Senator from Kentucky has just emerged once again, a characteristic that I have known for all of the years that I have known him.

When it comes to the good of his country, his own personal feelings are submerged. I wish that we had more of the men on the floor right now who have spoken in a critical way of President Nixon so that they might have heard the eloquence with which the Senator from Kentucky expressed his hope and desire that we would reserve our judgment until the President has had an opportunity to exercise the full responsiiblity that is his by virtue of his being the President.

I congratulate the Senator from Kentucky and I tell him that his action is something to be proud of.

I would like to extend the same general feelings to my friend, the Senator from Wyoming, a Democrat. I am a Republican. I guess that the only thing we have in common is that we are from the West.

The Senator from Wyoming is a great student of history and a great student of war. He has expressed exactly what I tried to express on the floor this morning. Probably I used more violent language. However, I have been known to do that.

I was appalled when the Senator from Massachusetts spoke critically of the President's action. I can recall when his brother mounted the Cuban episode. I happened to be called back to duty at that time. There was not a single Member of this body that stood up to be critical of President Kennedy. Congress was united behind him. The country was behind him, even though there might have been some areas in which he could have been criticized.

I would hope that the admonitions of the Senator from Kentucky and the Senator from Wyoming will be paid heed by those colleagues of ours who are tempted to feel, as the Senator from Wyoming has said, that they are Monday morning quarterbacks or Saturday night Presidents. There is a great temptation to criticize the President. However, I see no other course he could have taken. He could have, of course, done as some people have advocated, and come home.

I suggest that that would have been the end of the United States as a world power. Had he not been willing to live up to the word of an agreement made by President Johnson in 1968 to stop the bombing above the DMZ, we probably would not be faced with this dilemma tonight. But we would be faced with the certain knowledge that our country's leaders had acted in a rather dishonest way.

As the Senator from Kentucky has stated, we have known of this buildup for months, and months, and months. It is not a small buildup. It is a buildup involving thousands and thousands of vehicles, the movement of many, many surface-to-air missiles down into the South, in complete violation of the word of the leaders of North Vietnam. Yet it was suggested this morning by the Senator from Massachusetts that we sit down to play poker with the bunch that probably has 60 cards in its deck and stole 15 of ours, and probably they have an ace up every sleeve and in every shoe; crooked dishonest people who have one desire, and that is to prevent freedom from being accomplished anyplace in Asia.

I hope we can be restrained, watch what goes on, and not be too critical of a President who is faced with a choice in a matter he had no part in making, but has a supreme part in solving.

WAR POWERS LEGISLATION—IN THE BEST INTERESTS OF THE NATION

Mr. SYMINGTON. Mr. President, no more solemn responsibility is given to the Congress than the constitutional duty to exercise its judgment in deciding whether or not this Nation is to engage in war.

We know also, however, that the Constitution invests the President, as Commander in Chief of the Armed Forces, with awesome responsibilities including the equally solemn task to take immediate action when the United States has been attacked, or the Armed Forces of the United States are threatened with an imminent threat of attack.

In recent times the procedures employed for the exercise of these responsibilities have become clouded to the point where many Americans, as well as Members of Congress, question whether the legislative branch of Government does in actuality function constitutionally in the exercise of the Nation's warmaking powers.

Regardless of whether the cause of the weakening of congressional authority in warmaking decisions has stemmed from an over-reaching of the executive branch or a failure of Congress to exercise its constitutional authority, my years in Government convince me that the tragic involvement of U.S. forces in Southeast Asia has in itself demonstrated the clear need to achieve greater clarity of the constitutional responsibilities of the President and the Congress.

To fulfill the intent of the framers of the Constitution and insure that the collective judgment of both the Congress and the President will apply in the exercise of the war powers is the worthy and well-stated purpose of this war powers legislation.

Speaking broadly, the bill sets out circumstances under which our Armed Forces, in the absence of a declaration of war, may be introduced in hostilities, or in situations where there is a threat of imminent hostilities.

The circumstances for such use include at least all of the following: First, to repeal an armed attack or to forestall an imminent threat of attack on the United States, and also on our Armed Forces located outside the country.

Second, to protect while evacuating U.S. citizens and nationals, either in foreign countries or on the high seas.

Third, in the absence of a declaration of war, utilization of the Armed Forces pursuant to specific statutory authorization.

When our military is employed under any of the foregoing circumstances, the procedures thereupon call on the President to inform the Congress promptly of what has occurred and what is anticipated.

The heart of the bill, however, could lie in those provisions which would require the Congress to exercise its judgment for the continued engagement of our Armed Forces within 30 days from the time those forces have been utilized without a declaration of war.

This legislation, drafted with care, is the product of not only thoughtful Members of the Senate. It also bears the imprint of the thinking of outstanding legal, constitutional, and historical scholars.

It would seek to achieve that desirable objective of meeting the need for all Americans to participate through their representatives in the making of that most vital of all governmental decisions while at the same time preserving the constitutional powers of the Chief Executive.

I believe this legislation to be in the best interests of the executive branch, the legislative branch and the people of this country; and therefore urge its passage by the Congress.

QUORUM CALL

Mr. McGEE. 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.

ORDER OF BUSINESS

Mr. McGEE. Mr. President, I thought it appropriate to observe here this afternoon at this late hour on Friday, at the end of the week, that the State of Wyoming is well represented on the floor of the Senate, with both of its Senators being at the moment the only Members of this body present, and that the opportunity is a very tempting one to proceed with unanimous-consent legislation in-

volving the West and the State of Wyoming. I am open to any suggestions, if they are in order, on how the Senate might proceed.

I would like to ask a parliamentary question. Is it possible to proceed without a written bill pending before this body?

The PRESIDING OFFICER (Mr. HANSEN). The Chair regrets to have to advise its distinguished colleague that legislation must be presented in writing.

Mr. McGEE. In that case I will withdraw my proposal and yield the floor to the distinguished majority whip of the Senate, the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the distinguished senior Senator from Wyoming.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Mississippi (Mr. EASTLAND), chairman of the Committee on the Judiciary, I make the following statement.

The following nomination has been referred to and is now pending before the Committee on the Judiciary:

Thomas A. Grace, Jr., of Louisiana, to be U.S. Marshal, Middle District of Louisiana, for the term of 4 years; new position created by Public Law 92-208, approved December 18, 1971.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Friday, April 14, 1972, any representations or objections they may wish to present concerning the above nomination, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOMINATION OF RICHARD KLEINDIENST TO BE ATTORNEY GENERAL

Mr. ROBERT C. BYRD. Mr. President, earlier today the Committee on the Judiciary adopted a motion which I made before that committee. I ask unanimous consent that the motion be printed in the RECORD.

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

The motion, ordered to be printed in the RECORD, is as follows:

That, confining itself to the confirmation of Mr. Kleindienst and matters bearing directly thereon, the Committee continue its consideration thereon, not past Thursday, April 20, during which time specific witnesses called by the Committee, having testimony pertinent thereto, be heard; provided further that not later than Thursday, April 27, the Committee submit to the Majority Leader its written advisory report concerning the nomination.

Mr. ROBERT C. BYRD. Mr. President, my motion speaks for itself. It was adopted by a vote of 8 to 7, with one Member being absent. May I state for the record that with respect to the nomination of Mr. Kleindienst, I supported the reporting of that nomination originally by the committee to the Senate. I am, at this time, with an open mind on the nomination. I do feel, however, that the nominee deserves to have his day in court, so to speak, which he requested. He requested that the committee conduct further hearings on his nomination with respect to certain questions which had publicly arisen. He is also entitled to a final verdict. By the same token, I think that those Senators who wish still to hear legitimate witnesses with testimony pertinent to, and bearing upon, the nomination of Mr. Kleindienst, should be given a further opportunity within a reasonable period of time, to have such witnesses appear before the committee.

I believe that a reasonable amount of additional time should be allowed for the hearing of such further testimony as is germane to the nomination, but, beyond that, once such testimony has been heard, I think, as I have said, that the nominee is justified in expecting, and is entitled to, a verdict rendered by the full Senate, the nomination having already been reported to the Senate.

It is for these reasons that I offered the motion yesterday which was adopted by the Judiciary Committee today. Additional witnesses with pertinent testimony to the nomination should be heard, but, at the same time, there should be a cutoff date at some point and the hearings brought to an end. The committee should then, after a reasonable time, submit an advisory report to the majority leader so that the majority leader could be guided thereby, and if, in his judgment, the time had then come to call up the nomination for full Senate debate, he could do so.

I want to reiterate that I have an open mind on the nomination. I do not know today how I will vote on the nomination when it comes to a vote before the Senate. Incidentally, I am also of the opinion that those matters which do not have a bearing on the confirmation of the nominee should not be delved into at this particular point, but, without prejudice to the future consideration of such matters, I think that the committee certainly may want to go into them once the nomination has been disposed of one way or another. I am not suggesting that the committee close the door, once and for all, on any further examination of activities involving the ITT or other companies. I am saying that it ought to separate those matters—except where they are pertinent to the pending nomination—and come back to them after the nomination is disposed of.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday is as follows: The Senate will convene at 11 o'clock a.m. Immediately following the recognition of the two leaders under the standing order, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes, at the conclusion of which the Chair will lay before the Senate the unfinished business, the so-called war powers bill.

On Monday there is a time limitation on the pending motion by the distinguished Senator from Nebraska (Mr. HRUSKA)—the motion to refer the war powers bill to the Committee on the Judiciary. By unanimous consent, that motion can be set aside temporarily for the purpose of calling up amendments to the war powers bill, or it can be set aside temporarily by unanimous consent for consideration of other business. So rollcall votes on Monday are not ruled out.

On Tuesday a rollcall vote will occur at 2 p.m. on the motion by the distinguished Senator from Nebraska (Mr. HRUSKA) to refer the bill to the Judiciary Committee.

ADJOURNMENT UNTIL MONDAY, APRIL 10, 1972, AT 11 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 11 o'clock a.m. on Monday next.

The motion was agreed to; and at 3:31 p.m. the Senate adjourned until Monday, April 10, 1972, at 11 a.m.

EXTENSIONS OF REMARKS

DRUG HEARINGS

HON. JOSHUA EILBERG

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 29, 1972

Mr. EILBERG. Mr. Speaker, I recently held a full-day public hearing in the Fourth Congressional District of Pennsylvania, which I represent, on the problem of drug abuse.

The hearing was held to determine the scope of the problem in the district and what is being done to combat it.

A transcript of the hearing and my recommendations for action will be presented to subcommittee four of the Judiciary Committee, which is currently investigating the drug problem on a national basis.

Mr. Speaker, before I held the hearing it would have been easy to believe that my district did not have a serious drug problem. The area which I represent is semisuburban although it is wholly within the boundaries of the city of Philadelphia. It consists mainly of single-family homes; there are a great many active civic organizations; citizen participation in government is above average; and the children of the area constantly lead the city in scholastic achievement.

Unfortunately, there is a serious drug problem in the area. The 41 witnesses who testified or presented written state-