PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CORMAN (for himself and Mr. CONABLE):

H.R. 14254. A bill to amend the Internal Revenue Code of 1954 to repeal the capital gain throwback rules applicable to trusts; to the Committee on Ways and Means.

By Mr. GARMATZ:

H.R. 14255. A bill to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mrs. GRIFFITHS:

H.R. 14256. A bill to amend the Social Security Act to provide that every citizen and resident of the United States shall have a social security number; to the Committee on Ways and Means.

By Mr. HARVEY:

H.R. 14257. A bill to provide price support for milk at not less than 85 percent of the parity price therefor; to the Committee on Agriculture.

By Mr. JACOBS:

H.R. 14258. A bill establishing a commission to develop a realistic plan leading to the conquest of multiple sclerosis at the earliest possible date; to the Committee on Interstate and Foreign Commerce.

By Mr. JOHNSON of California:

H.R. 14259. A bill to designate the Emigrant Wilderness, Stanislaus National Forest, in the State of California; to the Committee on Interior and Insular Affairs.

By Mr. SYMINGTON:

H.R. 14260. A bill to amend the Public Health Service Act to provide the public with an adequate quantity of safe water for drinking, recreation, and other human uses, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. CONABLE (for himself and Mr. HORTON):

H.J. Res. 1148. Joint resolution to provide for the designation of the week which begins on September 24, 1972 as "National Microfilm Week"; to the Committee on the Judiciary.

MEMORIALS

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

349. By the SPEAKER: Memorial of the Legislature of the State of Oklahoma, relative to the pay of retired members of the Armed Forces; to the Committee on Armed Services.

350. Also, memorial of the House of Representatives of the State of Georgia, relative to returning certain moneys to Donald W. Morrision of Homerville, Ga.; to the Committee on Armed Services.

351. Also, memorial of the Legislature of the State of Colorado, relative to farm labor housing; to the Committee on Education and Labor.

352. Also, memorial of the Senate of the Commonwealth of Massachusetts, relative to unemployment in Massachusetts; to the Committee on Education and Labor.

353. Also, memorial of the Legislature of the State of Idaho, relative to the treatment of Basques by the Spanish Government; to the Committee on Foreign Affairs.

354. Also, memorial of the Legislature of the State of South Carolina, relative the United Nations Convention on Genocide; to the Committee on Foreign Affairs.

355. Also, memorial of the Legislature of the Commonwealth of Virginia, relative to authorizing a tour of the Liberty Bell throughout the United States; to the Committee on Interior and Insular Affairs.

356. Also, memorial of the First Constitutional Convention of the Territory of Guam, transmitting its final report; to the Committee on Interior and Insular Affairs.

357. Also, memorial of the Legislature of the State of California, relative to the protection of children from the harmful effects of dangerous toys; to the Committee on Interstate and Foreign Commerce.

358. Also, memorial of the Legislature of the State of Nebraska, ratifying the proposed amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

359. Also, memorial of the Legislature of the State of New Hamphire, ratifying the proposed amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

360. Also, memorial of the Legislature of the State of Arizona, requesting the Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States to permit offering voluntary prayer in public schools; to the Committee on the Judiciary.

361. Also, memorial of the Legislature of the State of Florida, requesting Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States relating to the choosing of a Presiding Officer of the U.S. Senate; to the Committee on the Judiciary.

362. Also, memorial of the Legislature of the State of Arizona, requesting the Congress to propose an amendment to the Constitution of the United States permitting each State to enact a residency law relating to public welfare assistance; to the Committee on the Judiciary.

363. Also, memorial of the Senate of the Commonwealth of Massachusetts, relative to the establishment of a "National Hunting and Fishing Day"; to the Committee on the Judiciary.

364. Also, memorial of the Legislature of the State of Oklahoma, relative to Federal judicial power in regard to transportation of students; to the Committee on the Judiciary.

365. Also, memorial of the Legislature of the State of Hawaii, relative to reform of public welfare financial assistance programs; to the Committee on Ways and Means.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

206. By the SPEAKER: Petition of the Council of the City of New York, N.Y., relative to reimbursement to the city of New York for the cost of police protection at the United Nations; to the Committee on Foreign Affairs.

207. Also, petition of the County Legislature, Suffolk County, N.Y., relative to support of the President's efforts to achieve an honorable and satisfactory conclusion of hostilities in Southeast Asia; to the Committee on Foreign Affairs.

208. Also, petition of the annual adjourned meeting, North Andover, Mass., relative to the war in Southeast Asia; to the Committee on Foreign Affairs.

209. Also, petition of Rev. James Lloyd Smith, New York, N.Y., relative to the late Adam Clayton Powell, Jr.; to the Committee on House Administration.

210. Also, petition of the Board of Commissioners, Salt Lake City, Utah, relative to the acquisition of certain lands in the Wasatch National Forest; to the Committee on Interior and Insular Affairs.

211. Also, petition of the Common Council, Buffalo, N.Y., relative to support of a busing moratorium and of the Equal Educational Opportunities Act of 1972; to the Committee on the Judiciary.

212. Also, petition of the City Council, Bremerton, Wash., relative to Federal-State revenue sharing; to the Committee on Ways and Means.

SENATE—*Monday, April 10, 1972*

The Senate met at 11 a.m. and was called to order by Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia.

PRAYER

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

O God, who by Thy spirit dost lead men to desire a better world, to seek for truth, to rejoice in beauty, and to long for perfection, illuminate and inspire all thinkers, all statesmen, and all leaders, that in all their labors they may be guided by whatsoever is true and pure and lovely that Thy kingdom may come on earth.

Direct us, O Lord, in this Chamber in all our doings with Thy gracious favor, and further us with Thy continual help; that in all our work begun, continued, and ended in Thee, we may advance the welfare of all the people and glorify Thy holy name.

In the Redeemer's 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 second assistant legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 10, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, April 7, 1972, be dispensed with.

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

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the

legislative calendar, under rule VIII, be dispensed with.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar, beginning with the Central Intelligence Agency.

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

CENTRAL INTELLIGENCE AGENCY

The second assistant legislative clerk read the nomination of Maj. Gen. Vernon Anthony Walters, to be Deputy Director, Central Intelligence Agency.

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

U.S. ARMY

The second assistant legislative clerk read the nomination of Maj. Gen. George Edward Pickett, U.S. Army, to be lieutenant general.

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

ACTION

The second assistant legislative clerk read the nomination of Walter Charles Howe, of Washington, to be Deputy Director of ACTION.

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE MARINE CORPS

The second assistant legislative clerk proceeded to read sundry nominations in the Marine Corps, which had been placed on the Secretary's desk.

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

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

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

LEGISLATIVE SESSION

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

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

AMENDMENT OF THE AGRICULTURAL ADJUSTMENT ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Agriculture and Forestry be discharged from its further consideration of H.R. 13361, the House companion bill to S. 3068, that the Senate proceed to its consideration; that all after the enacting clause of H.R. 13361 be stricken, and the text of S. 3068 substituted therefor.

The ACTING PRESIDENT pro tempore. Without objection, the committee is discharged from the further consideration of the House bill. It will be stated by title for the information of the Senate.

The second assistant legislative clerk read as follows:

H.R. 13361. A bill to amend section 316(c) of the Agricultural Adjustment Act of 1938, as amended.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of H.R. 13361?

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

Mr. COOPER. Mr. President, the Senate bill, S. 3068, was introduced by the distinguished Senator from North Carolina (Mr. JORDAN) with whom I have worked on tobacco problems on many occasions and who has been most faithful in promoting the well-being of the farmers of his State—and of farm families who depend on tobacco for their livelihood wherever they live. The bill was considered by the committee together with a similar bill which had passed the House of Representatives, H.R. 13361, and the Senate bill has now been substituted for the House language.

I would simply point out that at the time the House Committee on Agriculture was holding hearings on this subject, I did go over and testify, on February 8, because I was concerned that one of the bills before that committee included burley tobacco. That bill, which was not approved, would have permitted leasing of quotas across county lines, and would even have permitted the sale of tobacco allotments—which I have consistently opposed. I was assured at that time by the distinguished chairman of the Tobacco Subcommittee, Congressman WAT ABBITT, that the committee did not intend to change the burley program in any way, and would not approve the sale of tobacco allotments or transfers across county lines.

Since that time, Congressman WATKINS ABBITT, chairman of the House Subcommittee on Tobacco, has announced that he would not be a candidate for reelection. He will be greatly missed, for no Member of the other body has been more stalwart in representing the interests of rural areas and tobacco producers; his knowledge and long experience have been valuable to all of us.

The bill before the Senate today permits the leasing of Flue-cured tobacco quotas throughout the marketing year, rather than requiring that any leasing be made before planting time. In this respect the bill extends to Flue-cured tobacco the same procedure already being followed in burley tobacco, under the poundage program enacted last year. I have no objection to the bill and am glad to support its passage.

The ACTING PRESIDENT pro tempore. Without objection, all after the enacting clause in H.R. 13361 is stricken and the text of S. 3068 as reported by the Committee on Agriculture and Forestry is substituted therefor.

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

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 13361) was read the third time and passed.

Mr. MANSFIELD. I ask unanimous consent that S. 3068 be indefinitely postponed.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the distinguished minority leader desire to be recognized at this time?

Mr. SCOTT. Mr. President, I yield my time to the distinguished senior Senator from South Carolina (Mr. THURMOND).

Mr. MANSFIELD. Mr. President, I also yield my time to the distinguished Senator from South Carolina.

DEATH OF JAMES F. BYRNES, DISTINGUISHED SOUTH CAROLINIAN

Mr. THURMOND. Mr. President, it is with deep regret that I now announce the death of James F. Byrnes, a great South Carolinian and a great American, who died yesterday in Columbia, S.C. He was a Member of this body for 11 years, having served from 1930 to 1941 as part of a long and distinguished career in public service. It is an honor for me to speak today in praise of him.

His service to the Nation and to the State of South Carolina are hallmarks of great distinction. The scope of his long public career was broad, and he was recognized around the world for his great achievements. Nowhere, however, was James Byrnes' greatness recognized more than in his native State. He had served as a Congressman in South Carolina from 1910 to 1925, before coming to the U.S. Senate. Then following his successive service as an Associate Justice of the U.S. Supreme Court, Director of Economic Stabilization, Director of War Mobilization, and U.S. Secretary of State, he was elected Governor of South Carolina. The products of his public career

touched all of our lives, and we have reaped the benefits.

Governor Byrnes was a loyal friend. He was a man of great independence. He was guided by his conscience. His key role in the administration during World War II led him to be known as the Assistant President. It was during his service as Secretary of State that he first gave the warning that the Communist world posed a threat to world peace, and that this Nation must face that challenge from a position of strength. His term as Governor was one of enlightenment and pointed the way for continuing progress in our State.

I feel a great personal loss in the death of Governor Byrnes. All of us are saddened on this occasion. We will miss him, and I hope that our words will be of comfort to Mrs. Byrnes and all those close to them.

Mr. President, the wife of the President, Mrs. Richard Nixon, plans to attend the funeral of Governor Byrnes and to represent the President at the funeral on Wednesday next.

I am informed that General Clay will deliver a tribute to Governor Byrnes in front of the State House in Columbia. Following that, the funeral will be held at the Trinity Episcopal Church which is across the street from the State House.

Any Senators who wish to attend the funeral can contact my office today and arrangements will be made for them to ride down on Air Force Jet No. 1 that will be carrying Mrs. Nixon and the South Carolina congressional delegation to the funeral.

Mr. President, editorials and articles about the life and death of Governor Byrnes have appeared in newspapers all over South Carolina and the Nation. Mr. President, I ask unanimous consent that these tributes to Governor Byrnes be printed in the RECORD.

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

[From the Columbia (S.C.) State, Apr. 10, 1972]

BYRNES, BROWN, OLD ALLIES, OLD FOES

(By Kent Krell)

The first week of May three years ago was a special one for the late James F. Byrnes.

He celebrated his 90th birthday, 63rd wedding anniversary, received a personal visit from President Nixon and held an unheralded reunion with another famous South Carolinian.

Nixon appeared with a frail-looking Byrnes on the porch of the latter's home on May 3, 1969, one day after his birthday and wedding anniversary.

"You couldn't come to us, so we came to you," the President told Byrnes. The former South Carolina governor had intended to visit with Nixon in Washington but ill health made that impossible.

"Never in history," added the President, "has one man held more top offices with more distinction than Gov. Byrnes."

The porch appearance was Byrnes' last one in public.

Generally unnoticed at that time three years ago was a visit made to the Byrnes home in Columbia by State Sen. Edgar A. Brown, patriarch of the South Carolina Legislature.

Once close personal friends and political allies, Byrnes and Brown had had a falling out. The May, 1962 meeting brought them back together.

Brown, then 80, and the 93-year-old Byrnes reportedly had a great time swapping old political stories from their long careers in public service.

The early careers of Byrnes and Brown closely paralleled each other. Both began their legal careers in Aiken County. Both knew shorthand. Byrnes was a court stenographer. Brown was a stenographer for a law firm.

When Byrnes ran successfully for solicitor in 1908, Browns succeeded him as court stenographer.

In 1913, Brown got married and Byrnes, then a congressman, was his best man.

There was a strong bond between Byrnes and Brown for the next 40 years. But coolness between the two men developed with the 1952 presidential race.

Brown said Byrnes' endorsement of Republican Dwight D. Eisenhower led to their parting of the ways. Byrnes was governor of South Carolina at the time.

And two years later when U.S. Sen. Burnet R. Maybank died, the rift between Brown and Byrnes widened. The Democratic state committee, contending there wasn't time to hold a primary, nominated Brown. Gov. Byrnes, irked over that procedure, called a special primary. Byrnes then endorsed Strom Thurmond who waged a successful write-in campaign against Brown.

Brown was particularly hurt by those events and said so. While the bitterness lingered on, Byrnes always denied there was any personal ill-feeling on his part.

And it wasn't until early May of 1968 that the two elderly statesmen met at Byrnes' home and, in effect, said to each other: "Let's let bygones be bygones."

[From the Columbia (S.C.) State, Apr. 10, 1972]

BYRNES WAS "POP" TO MORE THAN 300

(By Ginny Carroll)

To more than 300 men and women throughout the United States, he was "Pop Byrnes," the man who gave them the money to go to college and then backed up the dollars with parent-like inspiration and guidance.

Almost all of them were at loose ends, finishing high school, wanting an education that seemed almost impossible to get when James F. Byrnes entered their lives.

The Rev. Hal Norton of Marion lost his father at 16. One of nine children, he didn't know where to turn. But in 1949 he became one of the first Byrnes Scholars.

"I used to tell Mrs. Byrnes he was the man who opened the door into a big world for me," he said in an interview Sunday, hours after Byrnes died at his Columbia home.

"I don't know how I could have gone to college without his scholarship, but he gave much more important things than what he gave in dollars.

"In the 23 years I have known him, I never wrote that what he didn't write back on any matter. His great words of wisdom and the companionship he shared through the years were far more enriching than any money he could have spent. Any problem was his problem," Norton said.

Byrnes set up the Byrnes Foundation in 1949, primarily to help young people who had lost one or both parents and who demonstrated financial need.

Mrs. Carol Sandifer of West Columbia, recalls that Byrnes once told "his children" that he initiated the scholarships because "He didn't want a memory in brick or stone. He wanted a memory that would live after he was gone."

Mrs. Sandifer said Byrnes attached no conditions to the money except that "we never do anything to give the Byrnes Scholars a bad name.

"He held a dear place in each of our hearts," she said. "He had us in his home to chat, even to check our report cards. He had the time and energy to take a personal interest in us."

Ralph Gregory, Columbia advertising executive, received a scholarship in 1950. "It was the only way I could have gone to college," he said. "It changed my whole life."

Now, Gregory is president of the Byrnes Scholars, an organization founded a few years ago to hold an annual reunion in tribute to the man who helped them when they had to have help.

In the early days, when the scholars were a small group, they gathered every year at Byrnes' beach home near Charleston.

Those getting-acquainted evenings always brought singing, remembers Mrs. Ames Wells of Columbia, a 1951 Byrnes scholar and secretary of the foundation.

"Every time we got together, we always sang 'Carolina Moon' she said. 'It was his favorite—I'm sure because of his great love for South Carolina."

Byrnes loved to sing and always joined in, she said.

He told us "Be firm but patient," Mrs. Wells said. In farewell, he always told them "Love to you."

Jake Salley of Columbia who works with the State Committee for Technical Education, was living in the small Orangeburg County town of Springfield when he was made a scholar in 1949.

"Being from a small town, I hadn't really been associated with up-in-the-world people," Salley said. "Then all of a sudden I was knocking on his front door."

When the scholars went to the beach, Salley said, Byrnes would arrange a boat tour around the harbor or other sightseeing, but the times that left the most memories were the warm evenings when the young people perched on the front porch and listened to their mentor's reminiscenses.

"Just sitting and listening to him talk about his days in Washington, about his meetings with the great men of the world was a revelation," Salley said.

In that brush with the world they had never seen, the scholars "got to know him as a person, and he got to know us," Salley said.

Dr. Wellbourne White, Columbia ophthalmologist, said one of the best feelings is getting a Brynes scholarship was knowing the money didn't have to be repaid by a certain time.

"It was freely given," he said. "He wanted to help people who needed help without giving them a financial burden to worry abou'."

As a result, many of the people who received the money have returned it to the foundation several times over.

Marshall Plyler, 1961 scholar, now in public information with the State Board of Health in Columbia, recalls that when he was president of the Brynes Scholars, he dropped by Byrnes' office frequently.

When he graduated from college, he wanted to get a military deferment and teach school, he said, but Brynes convinced him it was important to get his obligation out of the way.

Robert R. Mallard, associate judge of the Family Court in Charleston, got his scholarship in different circumstances. He had graduated from The Citadel but wanted to go to law school.

Both his parents were dead, and he went through the first four years on the GI Bill. Recently married, he lacked money for law school.

At first Byrnes turned him down. After repeated discussions, he was called one day to the Byrnes home on Isle of Pa'ms.

"He called me over to tell me no," Mallard recalls, "but I won the argument before I left his home. I guess that was my first argument as a lawyer."

While a student at the University of South Carolina, Mallard dropped by Byrnes' Colum-

bia office almost every day. Byrnes got him a job as a law clerk.

"I had no parents. I used to talk with him about whatever came up—little old piddling things to big things. I'll never forget the things he taught me."

Many of the Byrnes Scholars are expected in Columbia for the Byrnes funeral, at least one from as far away as Indiana.

Ervin Faulkenbury, now a captain of the Episcopal Church Army in Indiana, was 10 years old when his mother died in 1941. He was a student at the Episcopal Church Home for Children in York when the scholarships were offered in 1949.

He used the money to go to Clemson. "I would have gone anyway," he said Sunday. "I might have made it for one semester before the funds gave out."

How does he feel about Byrnes?

"They became Mom and Pop Byrnes, he and Miss Maude. That sums it up for me."

Dr. William E. Rowe said he is coming from Chattanooga, Tenn., for the rites. Now a prominent general surgeon, he received his scholarship through Byrnes and Bernard Barouch who knew him in Georgetown.

He has returned to almost all the reunions of the Byrnes Scholars.

"Over the years, he has been a guiding light to all of us," Rowe said, "an inspiration to do better. The only thing he ever asked us was to do the best we could."

[From the Columbia (S.C.) State, Apr. 10, 1972]

BYRNES CAME CLOSE TO PRESIDENCY DURING HIS 45 YEARS OF SERVICE

James F. Byrnes, who died Sunday less than a month away from his 93rd birthday, made a deep mark in world, national and South Carolina affairs during nearly half a century of public service.

Byrnes served in all three branches of the federal government—the legislative, executive and judicial—as well as the top executive position in his beloved South Carolina.

He was believed to be the only man in the history of this country to have ever served as representative, senator, and governor of his state and also as a justice in the Supreme Court of the United States and Secretary of State.

In addition to this, the tremendously energetic public servant spent most of World War II years as Director of the Office of Economic Mobilization and later became Director of the Office of War Mobilization. In the latter capacity he was generally called the "Assistant President."

FIRST IN LINE

As Secretary of State under Harry S. Truman after the death of Franklin D. Roosevelt, the South Carolinian was first in line to succeed Truman to the presidency should the Missourian have died.

The last elective office held by Byrnes was that of Governor. He was nominated in the Democratic primary of June 1950, polling over 71 per cent of all the votes. He was opposed by three other candidates.

During the campaign he pledged to work for improvement of the state's public school system, and to provide more adequate facilities for mental patients in the State Hospital.

His recommendations to the 1951 General Assembly resulted in enactment of a vast school improvement program designed to furnish equal facilities for all children. The following year the program was expanded to include improvement of the state colleges and universities.

Byrnes was born May 2, 1879, in a galleried frame house on King Street, in Charleston, a son of Irish immigrants. His parents had come to the United States after the Irish famine of 1840. His father had died a few months before he was born.

EDUCATION

Young James Byrnes received a public school education, and studied shorthand at home. He helped support his family by delivering dresses turned out by his seamstress mother.

In 1900 Byrnes took a competitive examination for court stenographer for the Second Judicial District of South Carolina. Although the youngest contestant he won, and then moved with his mother to Aiken.

While a court stenographer, he worked one of the most famous trials in South Carolina history—the trial, in Lexington county, of Lieutenant Governor James H. Tillman for the killing of N. G. Gonzales.

Incidentally, Gov. Byrnes never forgot his Court reporting skill. At his final press conference as Governor he told of having a collection of "scraps of paper" on which were scribbled shorthand notes of personal and telephone conversations with important state and national officials and diplomats.

From these notes he was able to reconstruct verbatim conversations with such people as former President Harry S. Truman and other high government officials.

During the time he served as a court stenographer, Byrnes studied law, being admitted to the bar in 1903. This period of Byrnes' life was spent in Aiken.

ACQUIRED NEWSPAPER

The energetic young man acquired the Journal and Review, a weekly paper in Aiken, the same year he was admitted to the bar, and edited the weekly until 1907. In the meantime, he and Maude Perkins Busch of Aiken married.

At this point he sold part ownership in the paper, and was elected solicitor of the Second Judicial District, serving from 1908 to 1910.

His next venture in politics was to run for Congress against a veteran member of the House. He surprised everyone, including himself, by garnering 57 more votes than his opponent.

The South Carolina statesman served continuously in the House from 1910 until 1924, when he made the race for Senator. He was defeated, and for the next several years devoted his energies to building up a highly successful law practice in Spartanburg.

In 1930 he again made the race for United States senator, and this time was successful. The 1924 defeat was his first and only loss.

While serving in Congress during World War I, the agile, energetic representative of South Carolina formed a fast friendship with the then Assistant Secretary of the Navy, Franklin Delano Roosevelt.

When 1932 rolled around, James F. Byrnes was in the Roosevelt corner and persuaded the South Carolina delegation to swing behind the New Yorker. He became in a short time one of the most trusted and able of the tacticians for the Roosevelt program.

By 1936, he was frequently called the "White House Messenger Boy" because of his close association with the president. His technique in handling the most difficult legislative programs of the President became legend. Whenever questions arose as to the administration attitude on any matter, "Jimmy," as his colleagues called him always had the answer.

DISAGREEMENTS

In the later years of his second term, Byrnes sometimes disagreed with the president over domestic policies. These differences arose during a period when a split was developing between conservative and liberal elements of the party.

Nevertheless, during the third term for FDR, Byrnes carried the administration ball on all the prime wartime issues. Perhaps the most spectacular achievement of the "party whip" was Byrnes' strategy in winning approval of the bitterly debated Lend-Lease program.

A Supreme Court vacancy occurred in January, 1941, and it was an open secret in Washington that the appointment would go to Senator Byrnes. However, he was badly needed in the Senate on the Lend-Lease program; and his appointment did not come until July.

Associate Justice Byrnes stayed on the bench only a short time—from July, 1941 until October, 1942. At this point Roosevelt asked Byrnes to resign and accept appointment as Director of Economic Stabilization. He resigned this post and was appointed Director of War Mobilization in 1943.

[From the Columbia (S.C.) State, Apr. 10, 1972]

BYRNES FOUNDATION OFFERS SCHOLARSHIP FOR ORPHANS

Following publication of his book, "Speaking Frankly" in 1948, Byrnes established the James F. Byrnes Foundation to provide college educations for South Carolina orphans.

To finance the foundation, Byrnes consolidated the $50,000 he received from the now-defunct New York Herald Tribune for newspaper rights, about $40,000 in book royalties, and monies from other writings, along with his federal retirement income.

The foundation provides four-year college scholarships in the amount of $500 per year to worthy, needy students who have lost one or both parents. It helps an average of 25 students each year.

In 1964, Byrnes made it known that he and Mrs. Byrnes had written wills leaving their estates to increase the Foundation.

That year, also, the late Miss Cassie Connor, Byrnes' secretary for more than 35 years, revealed that Byrnes "even sold his summer home at the Isle of Palms one year for $32,000 to raise money for the Foundation."

Under the management of the late Miss Connor, the foundation has paid out more than $900,000 in scholarships for "Byrnes Scholars." In September 1953, there were some 51 students scheduled to attend college on Foundation scholarships.

On the wall of his office-den, next to the proclamation of his Distinguished Service Medal, hangs a simple bronze plaque inscribed: "To mom and pop Byrnes from your foundation children." It is engraved with the names of fatherless boys and girls whom Byrnes helped through college.

Over the years, scholarship recipients and their families have gathered in Columbia for an annual convention in honor of the South Carolina statesman. More than 350 students have been helped by his Foundation.

But much more than money was involved in Byrnes' efforts for his young friends. "In addition to the money you've got to give yourself," he said. "You've got to take the place of the father these children have lost, as best you can. Money isn't. . . ."

[From the Columbia (S.C.) State, Apr. 10, 1972]

JAMES FRANCIS BYRNES: A MAN OF HISTORY

History hangs in South Carolina as does the moss on live oak and cypress in the Lowcountry. And yet, as a man who loved it said, history can be as timely as the events occurring in the wake of the sweep second hand on your watch.

South Carolina's history stretches back over three eventful centuries. If history is the collective biography of great men, then South Carolina is historically rich because of the lives of such giants as Moultrie, Rutledge, Marion, Sumter, Pickens, the Pinckneys, the Hamptons, Calhoun and all of its other sons whose greatness is etched not only into the history of their state but of these United States.

But their stories are the remembrances of things past. To all but the very young, the story of James Francis Byrnes is of the pres-

ent; at least, it's in the wake of that second hand.

What a span of time that was; and what a man of his time was this man Byrnes:

The World War I congressman, even then making his mark.

The lawyer, who served with brilliance with one of the state's most celebrated and colorful firms.

The senator, who both supported and opposed Franklin D. Roosevelt's New Deal as his conscience guided him.

The Supreme Court Justice, who couldn't continue to mediate on the niceties of the law when his country needed him elsewhere.

The ranking home-front mobilizer during the critical days of World War II when all of America gathered behind the concept of victory.

The Secretary of State, who first crossed swords with Communist Russia and warned the world that here was an intractable foe that must be dealt with in terms of strength.

The governor, who began to lead his state out of the abyss of prejudice "because it is right."

His service did not end when he retired from his last public office as governor of South Carolina in 1955. Through his books, his scholarship program and his wise counsel, "Jimmy" Byrnes continued for years to influence those who came after him.

There were those—and President Harry S Truman was among them—who felt that Byrnes deserted the principles of the New Deal and turned reactionary. Others felt he was merely applying his extraordinary political intellect to the changes of his time.

Jimmy Byrnes was a product as well as a practitioner of American politics. He and the system both complemented and complimented one another, as attested to by his rise from an humble Irish Catholic background in Charleston to become a man of state, national, and international influence.

It also is a tribute to the American system that an individual with limited formal education could, by determination and ambition and diligence, enter the highest councils of the world.

His career, adorned by his gracious wife Maude and aided by his long-time secretary, the late Miss Cassie Connor, was the stuff of which history is made. And yet, as those who knew him at all can testify, he was every bit the lively human being, a man who never lost his zest for living.

Rutledge, Calhoun, and even the Wade Hampton of the Confederacy are pictures in history books for persons now living in the Palmetto state. Jimmy Byrnes was living history only yesterday. But the second hand, after almost 93 years, has ticked away his final hour.

Today, he has taken his deserved place among South Carolina's immortals.

[From the Columbia (S.C.) State, April 10, 1972]

ROOSEVELT URGED BYRNES TO SEEK VEEP NOMINATION

As head of the OWN, Byrnes was referred to as "Assistant President"—a term coined by Roosevelt himself. He had supervision over about everything except military and diplomatic matters.

EMERGENCY MEASURES

To speed the war effort on the home front, Byrnes declared a series of emergency measures. These included restrictions on travel and on national conventions, a ban on horse and dog racing, a lights out and a midnight curfew on most night life. All of these he deplored as "irritants to a war-weary public."

After the war Byrnes received a Distinguished Service Medal from President Truman in acknowledgment of his "major contribution to the war effort. The citation said:

"His sympathetic consideration of both military and civilian needs struck a delicate balance that insured the armed forces sufficient manpower and material for a maximum effort in a global war while maintaining civilian economy at the highest level of any belligerent in World War II."

Special mention was made of his services in accompanying Roosevelt to the conference at Yalta in the Crimea with Premier Joseph Stalin and Prime Minister Winston Churchill shortly before Germany's surrender. He later went to Potsdam with President Truman—after the victory over Germany.

When the nation, anticipating Germany's defeat, began to plan for demobilization and restoration of industry to peacetime status, Byrnes was appointed director of the Office of War Mobilization and Reconversion.

TEMPORARY ASSIGNMENT

The South Carolinian agreed to take the job, embracing his former duties and added ones, on a temporary basis. A little later, when he again sought to return to private life, President Roosevelt prevailed on him to stay on until victory over Germany.

A few weeks before Germany's capitulation, when victory was assured, Byrnes resigned and returned to his native state, President Roosevelt expressed regret as the severance of a relationship "as delightful to me personally as it has been of advantage to the national interest."

In the meantime, Byrnes had missed, by virtue of the famous "check it with Sidney" incident, becoming the president of the United States.

Supposedly the South Carolinian could have had the vice presidential nomination by simply agreeing to accept the nomination in 1940. In 1944 he was the leading contender for the vice presidency, and had the promise of the support of Roosevelt.

Actually only a week before the convention Roosevelt had passed the word to Mayor Edward J. Kelly of Chicago, a party leader and National Democratic Chairman Robert E. Hannegan to go ahead with Byrnes' nomination. Roosevelt requested that his "assistant President" go to Chicago and actively seek the vice presidency.

Friends quickly lined up a substantial block of votes for Byrnes—there is one story that Harry S. Truman left Kansas City in possession of a speech nominating James F. Byrnes for the office—but opposition developed.

HILLMAN OPPOSITION

Sidney Hillman, chairman of the Congress of Industrial Organizations Political Action Committee, was opposed to the South Carolinian, as was National Committeeman Edward J. Flynn of New York. Flynn allegedly convinced Roosevelt to dump Byrnes in favor of someone more acceptable to such organizations as the CIO. Byrnes withdrew, and Harry Truman was picked for the number two spot.

Roosevelt died less than a year later, and Truman became president.

Regarding his withdrawal from the vice presidential race, Byrnes said:

"I took the position that having resigned from the Supreme Court to help in the prosecution of the war, with offices in the White House, I could not oppose the President's request and continue in the contest for the vice presidency."

Byrnes had scarcely had time to shake the Washington dust after resigning as "assistant President" before he was called back to the capital city.

On the second day of the Truman administration, former War Mobilizer Byrnes was conferring with the new chief executive. In the summer of 1945 he was named Secretary of State, succeeding Edward R. Stettinius Jr., who had been appointed American delegate to the Preparatory Commission of the United Nations.

When the Byrnes nomination reached the Senate, that body adopted the unusual procedure of unanimously approving without traditional reference to a committee.

UNITED NATIONS ROLE

As Secretary of State Byrnes signed the protocol formally attesting that the charter of the U.N. has come into force. This was in the fall of 1945, when the Soviet Union deposited its instrument of ratification—the 29th such document deposited and the last one needed to put the charter into effect.

Secretary Byrnes, in signing the protocol, said the charter had become a "part of the law of nations" and was "a memorable day for the peace-loving peoples of all nation."

As Secretary of State Mr. Byrnes developed a policy toward Russia which he described as "patient firmness." Our war-time allies became increasingly cantankerous during this period, and were continually stirring up trouble in neighboring countries, and literally stripping some of the conquered nations of all assets.

Secretary Byrnes described the Russians as a neighbor "who deliberately makes himself unpleasant." However, he did not advocate going to war with the Soviet Union.

In connection with his resignation, Byrnes tendered his resignation in April of 1946, but at Truman's request agreed to remain on until the satellite treaties were signed. Byrnes asked in December of 1946 that his resignation be accepted as of January, 1947, and this was agreeable with Truman.

Truman thanked Byrnes for his services to the nation and lauded his long public service in accepting the resignation. Later the two had bitter disagreements.

A 1952 book, "Mr. President," written by radio commentator William Hillman with Truman's full cooperation reported that Truman scolded Byrnes severely upon the Secretary's return from a three-power conference in Moscow in 1945.

TRUMAN SQUABBLE

Byrnes called the statement "absolutely untrue," saying that if the President had done so, he would have resigned immediately. He stayed on as Secretary of State more than a year after this alleged scolding.

The book reported that Truman upbraided his Secretary of State for not keeping him (Truman) informed of what Byrnes was doing at the conference. It also quoted Truman as saying he was tired of babying the Soviets, and "do not think we should play compromise any longer."

Byrnes replied with a blistering attack on Truman in a Collier's magazine article. He accused Truman of writing history to suit himself, and denied again that the President had criticized him.

Actually, said Byrnes, his relations with Truman were friendly while he was Secretary of State. The break with Truman did not come until June, 1949, declared Byrnes, when he made a speech criticizing parts of Truman's domestic program.

"After that," wrote Byrnes, "Truman appeared determined to construct a record against me without regard for the facts."

Byrnes wrote that the President's memorandum implied Byrnes was easy on Russia, but cited statements by John Foster Dulles as proof to the contrary.

Byrnes recalled that Dulles stated the U.S. policy of "no appeasement" had been created by Byrnes in a meeting at London in the fall of 1945. Then Byrnes refused various concessions the Russians were demanding in post-war settlements.

Dulles served as Republican foreign affairs advisor to the Truman administration at various times.

DULLES REPORT

Dulles had said after the London conference the Soviet delegation "wanted to find

out how much of our principle" the United States was willing to sacrifice and continued:

"They did find out. They found out that the United States was not willing to sacrifice its principles . . ."

He added that Secretary of State Byrnes was entitled to the "support of the American people without regard to party, in standing for principle rather than expediency, in keeping with the best American tradition."

When Secretary Byrnes was at the Paris Peace Conference in 1946, Henry A. Wallace, then Secretary of Commerce, attacked the United States foreign policy in a speech at New York's Madison Square Garden.

Wallace declared that in dealing with the Soviet Union, this nation was reckoning with a force wh'ch could not be handled successfully by a 'get-tough-with-Russia" policy.

Byrnes protested to President Truman, who announced he had silenced Wallace for the duration of the Peace Conference. Byrnes insisted however, that his fellow cabinet member be hushed up for as long as he remained in the cabinet or he (Byrnes) would resign forthwith as Secretary.

The next day President Truman fired Wallace. Wallace attributed his dismissal to his own bow and arrow."

In 1949, Byrnes criticized what he called the Truman Administration's socialistic trend, and as time went on, Byrnes became increasingly critical of Truman policies.

In 1952, Byrnes supported and voted for Eisenhower, the Republican candidate for president.

"If you want more of the Truman Administration," he said in a statement announcing for his support of Eisenhower, you should vote for Gov. Stevenson. If you have had enough, you should vote for Gen. Eisenhower.

During the campaign, Byrnes said "Carpetbaggers" controlled the national Democratic party, and that the national party had deserted the fundamental principles of the party. South Carolina almost ended up in the Eisenhower column, the Republican losing the state by only a few votes.

In 1953, President Eisenhower appointed Byrnes, then governor of South Carolina, a delegate to the United Nations General Assembly, top committee posts. This, incidentally, was the last "assignment" as an official representative of the federal government.

SCHOOL PROGRAM

Meantime, as governor of South Carolina, Byrnes had set in motion a huge school expansion program concentrating on equalization of school for white and Negro children.

"We should do it because it is right," he explained. "For me that is sufficient reason." He allotted two-thirds of a 100-million dollar fund to Negro schools.

When the Supreme Court in 1954 ruled that states do not have the right to deny admission to a public school because of race, it struck down a long-standing "separate but equal" doctrine which had been the law of the land since 1896.

Byrnes, a former justice of the Supreme Court, criticized the court for reversing itself. He has since addressed bar associations in several northern states in which he expounded his reasons for saying the Court erred in ruling as it did in 1954.

In the 1956 presidential election, Gov. Byrnes found it impossible to support either President Eisenhower or Adlai Stevenson, and supported the Independent movement in the state. He had earlier declined to let himself be considered as a possible delegate to the national convention.

SEEKS COURT CURB

When Gov. and Mrs. Byrnes celebrated their Golden Wedding anniversary on May 2, 1956, he received greetings from President Eisenhower, and from many other public figures. That same month Gov. Byrnes wrote an article which appeared in U.S. News and World Report in which he called for a curb on the power of the federal courts.

In January of 1957 he was named to the Board of Trustees of Converse College. A month earlier he was re-elected honorary president of the Alfalfa Club, a famed dining organization in Washington, D.C.

Senators and representatives from other states who knew Byrnes in Washington, D.C., always had words of praise for the South Carolinian. They frequently compared Byrnes with John C. Calhoun, one of five senators nominated for the Congressional Hall of Fame.

[From the State, Apr. 10, 1972]

SOUTH CAROLINA OFFICIALS MOURN DEATH OF BYRNES

South Carolina officials mourned the death of former Gov. James F. Byrnes Sunday with lavish praise for his statesmanship and political acumen.

Gov. John C. West, visiting Japan with several other governors, said South Carolina "has lost its most honored citizen; the nation has lost a dedicated servant; and the world has lost a great leader."

West announced through his Columbia office that flags on all state buildings would be flown at half-staff until the day after the funeral.

". . . No one served his fellow man with more distinction than did this gentleman," said West. "As citizen Byrnes in his latter years, he never retired from the job of serving the public with the type of guidance, moral strength and love of mankind which made his life an example for all of us to follow.

"Gov. Byrnes was a man born to the moments of challenge. In days of economic need and depression, he was a man of strength and compassion. In days of war, he was a man of peace who steered the world out of the chaos of oppression and tyranny. In days of uncertainty and turmoil in the wake of war, he was a man of deep understanding and devotion of the cause of peaceful harmony to the cause of peaceful harmony among all men," said West.

"He was one of the greatest statesmen of our time," said Sen. Strom Thurmond, R-S.C., who said some time ago he felt a close philosophical kinship with Byrnes.

"South Carolina and our nation have lost one of their most distinguished citizens," said Thurmond. "He was a devoted friend of mine and I feel a deep personal loss in his passing."

Sen. Edgar Brown of Barnwell, the 83-year-old dean of the State Senate, was saddened by the news of Byrnes' death.

"We have lost a fine American political leader," Brown said in a statement from the Barnwell home.

"Although we differed on politics in later years our personal relationship never changed.

House Speaker Solomon Blatt, 75, called Byrnes "A great statesman" and one of the country's most outstanding citizens.

"We have lost a statesman who was interested in the welfare of all mankind," Blatt said from Barnwell. "His objective was to bring peace to all the nations of the world. In his death I have lost a great friend and the state has lost its most outstanding citizen. I express my deepest sympathy to Mrs. Byrnes."

U.S. Circuit Judge Donald S. Russell, who worked closely with Byrnes as a law partner and in various federal jobs, said Byrnes was "one of the really distinguished men of his age."

"I personally am deeply distressed," said Judge Russell. "It is very sad—I grieve for his wife who in her way was equal to him in his greatness. She is a wonderful lady.

"The two of them," added the one-time governor and U.S. senator, "were one of the really distinguished couples of political life."

Former Gov. Robert E. McNair said Byrnes was "an inspiration to all of us in politics and government and earned his place in the history of his state and nation."

"Mr. Byrnes," McNair went on, "was one of the truly great leaders of this nation and South Carolina's foremost statesman . . . all of us join his many friends in mourning his passing."

Sen. Marion Gressette of St. Matthews said South Carolina "has certainly sustained one of the greatest losses in our generation.

"He was in every way an outstanding man and all the important positions he held he did so with distinction," said Gressette. "It is a personal great loss to me."

Sen. Ernest Hollings was out of the country, but issued a statement through his office.

Hollings said he was "deeply moved by the death of Jimmy Byrnes."

The senator said he had a deep personal respect for Byrnes and recognized him "as one of those rare individuals, who during his lifetime, participated in all three branches of government."

Hollings is headed back to the United States and plans to attend the funeral.

U.S. Rep. James Mann remembered Byrnes as one who helped him start on his career.

Mann said, "He contributed substantially to my career by appointing me solicitor of the 13th circuit in 1953.

"His contributions to the state and nation are of lasting impact. We will miss his leadership, but South Carolina will record him as one of its greatest citizens."

Byrnes also served as a Life Trustee of Clemson University since 1941, Clemson President Robert Edwards said. "This nation and this state will always remember Gov. Byrnes for his unique and life-long career in public service and all branches of government.

"Clemson will cherish his memory because he served as a Life Trustee and because he placed the records and souvenirs of his remarkable life in the Clemson Library.

"We have lost one of the greatest and most beloved members of the Clemson University family."

Gen. William C. Westmoreland, Army Chief of Staff, said at his Ft. Myer, Va., headquarters, "It was with great sorrow that I learned today of the passing of my close personal friend of many years.

"One of the most distinguished Americans of this century, he served his country faithfully in many critical posts in each branch of the federal government as well as performing distinguished service to his home state," said Westmoreland, a native Columbian.

"I will miss his advice and assistance as will the many others who profited from his wise counsel," he said.

[From the State, Apr. 10, 1972]

NEARLY 50 YEARS OF PUBLIC SERVICE

(By Robert G. Liming)

James Francis Byrnes, who rose from messenger boy to Supreme Court justice, secretary of state, "assistant President," and capped his amazing public career as governor of South Carolina, died Sunday at the age of 92 in his Columbia home.

Byrnes, a leader in mobilizing the country for World War II and negotiating post-war treaties, died less than a month before his 93rd birthday after a lengthy illness.

A spokesman at the comfortable Byrnes home in the Heathwood section of Columbia said the former governor, who had been hospitalized three times in recent years for heart ailment, died at 1:30 p.m.

Late Sunday night it was announced that Byrnes' body would be taken to the State House sometime Tuesday and lie in state in the rotunda from Tuesday afternoon until Wednesday morning.

Retired Gen. Lucius Clay, a longtime friend of Byrnes, is scheduled to deliver the eulogy

during the State House services at noon Wednesday.

Another service at Trinity Episcopal Church, across the street from the State House, has been scheduled to follow the public service with burial in Trinity Churchyard.

Dr. James Stirling, pastor of Trinity Episcopal Church, Bishop John Pinckney and Bishop Gray Temple were tentatively scheduled to conduct the funeral services.

A spokesman for the family said Mrs. Byrnes and Byrnes' private nurse were at his bedside when the statesman died.

Byrnes, a virtual invalid in recent months, had been scheduled to attend a massive public ceremony on May 2, his birthday, to unveil a statue of him on the State House grounds.

His remarkable lifetime of public service spanned nearly half a century in which he served seven terms in the U.S. House of Representatives and 11 years in the U.S. Senate before his June 1941 appointment as an associate justice of the Supreme Court.

The statesman resigned from the high court in 1942 to head the Office of Economic Stabilization and in 1943 he took over the vital job as director of the War Mobilization Office.

In his inspiring lifetime, Byrnes was a lawyer, editor of The Aiken Journal and Review, circuit solicitor, author, benefactor and world leader.

Byrnes spent his last years in the quiet surroundings of his home with his wife, the former Manda Perkins Busch of Aiken, whom he married on his 27th birthday in 1906.

The childless couple might have lived in a wealthy style, but he chose to donate the profits from his books to the education of orphans and needy children.

He formed the James F. Byrnes Foundation in 1948 to give needy young people the formal education he was never afforded the luxury of having.

Since the establishment of the scholarship more than 500 youngsters, who are either orphans or without a father or mother, have received over half a million dollars to further their education.

A plaque on the wall in his study reads, "To Mom and Pop Byrnes from your Foundation children," and Byrnes said of the program open to blacks and whites, "It is the most rewarding thing I ever did in my life."

Born in 1879 in the port city of Charleston, the son of Irish immigrant parents, Byrnes' father died a few months before he was born.

His widowed mother, who lived until 1931, kept the family together with "Jimmy's" help by working as a dressmaker and a choir leader.

Byrnes, through hard work and dedication, took his first job as a messenger boy in a law office at $2 a week and continued to climb up the political ladder from court reporter to a career capped by his election as governor of the Palmetto State.

He became a close friend of President Franklin D. Roosevelt, then governor of New York, after his 1930 election to the U.S. Senate.

Roosevelt described Byrnes as "assistant president for the home front," but passed him over in 1944 to select Harry S. Truman as his vice presidential running mate. Byrnes willingly stepped aside at Roosevelt's request in what some historians say was a sectional fight.

Shortly after Roosevelt died in 1945, President Truman appointed Byrnes secretary of state, a post he held until 1947.

During his tenure as secretary of state, Byrnes took part in 10 international conferences and numerous meetings with the Russians at peace treaty negotiations.

He was secretary of state when the Americans dropped the first atomic bomb on Japan and took part in the Potsdam Conference with Truman.

Byrnes quit as secretary of state in 1947, on what he said were doctors orders to slow down. He later broke with Truman over United States policy with the Soviet Union.

He was named a United Nations delegate in 1953 by President Dwight D. Eisenhower, who he backed for election over Democrat Adlai E. Stevenson.

The world-renowned statesman culminated his extraordinary political career by serving his beloved South Carolina as governor from 1951 to 1955.

After leaving the governor's office he spent much of his time administering the special scholarship fund he had set up to help needy children receive an education.

Byrnes made a brief public appearance in May of 1959 to receive President Nixon and a group of other dignitaries on the front porch of his home for a birthday celebration.

"Never in American history has one man held more high offices with distinction than has Gov. Byrnes," Nixon said as he stood by the frail Byrnes and his wife Maude.

Nixon, spending the weekend at Key Biscayne, Fla., when informed of Byrnes death ordered the White House flag to be flown at half-staff in honor of the statesman.

In an official statement Sunday the President said, "No man in American history has held so many positions of responsibility in all branches of our government with distinction.

"He was a great patriot, who always put his country ahead of his party. Mrs. Nixon joins me in expressing deepest sympathy," he added.

Nixon said he had contacted Mrs. Byrnes to offer assistance and express his sympathy. He assured Mrs. Byrnes that Mrs. Nixon would attend the funeral services as his representative.

Gov. John C. West, who is in Japan on an industry finding trip, issued a statement declaring the day of Byrnes' funeral a day of mourning and ordering all flags on state buildings to be flown at half-staff until the day following the funeral.

West said, "The state of South Carolina has lost its most honored citizen; the nation has lost a dedicated servant; and the world has lost a great leader."

The governor added, "We join men everywhere on this occasion in mourning a loss which is truly shared by all, and honoring the memory of a man who truly served all."

[From the State, Apr. 10, 1972]

"ASSISTANT PRESIDENT"—BYRNES HELD VARIETY OF POSTS

Former U.S. Secretary of State James F. Byrnes, dubbed—"Assistant President" by Franklin Roosevelt during the years of World War II, attained almost every political distinction in his long career in public service.

The 92-year-old South Carolinian entered politics in 1908 as solicitor for a judicial circuit.

On his way to becoming President Harry S Truman's Secretary of State in 1945, Byrnes served as a member of both Houses of Congress and Associate Justice of the U.S. Supreme Court.

During the Roosevelt Administration in the early 1940's, Byrnes was director of Economic Stabilization and head of the Office of War Mobilization.

So sweeping were his powers that Roosevelt called him his "Assistant President."

After two years as Secretary of State, at an age when most men retired, the then 71-year-old politician became governor of South Carolina.

During his retirement years following his governorship, Byrnes was a familiar figure in downtown Columbia. He visited his office almost daily for many years, walking briskly and wearing his hat at a jaunty—almost rakish—angle to match the quizzical slant of his brows.

Byrnes' declining health forced him to stay close to home recently. He made few public appearances.

One of his last outings was last October in Greenville, where a documentary film of his life was shown to a private audience at the exclusive Poinsett Club.

President Richard M. Nixon, at that time campaigning in the upper section of South Carolina, stopped in Greenville for a chat with Byrnes.

Although a Democrat, Byrnes chose to support Republican President Dwight Eisenhower in 1952 and Nixon in 1968.

Byrnes was born May 2, 1879, in Charleston, the son of James Francis and Elizabeth E. Byrnes. His father died shortly after the young Byrnes' birth.

The boy helped support his widowed mother by selling newspapers and doing odd jobs. High school was beyond his meager means.

Mastery of a short-hand course led to a post as official court reporter in Aiken County in 1900. Meanwhile, the bright, slightly built youngster read law and was admitted to the Bar in 1903 at the age of 24.

For the next four years, Byrnes edited and published the Aiken Journal and Review. When he was 29, the hard-working lawyer-editor became solicitor for the judical circuit—his first elective office.

To Byrnes' admitted surprise, shared by many others, he eked out a 57-vote victory over a veteran congressman in 1910. He later said he ran "on nerve and nerve alone." Byrnes served in the House for 14 years, losing a Senate race in 1924. After the defeat, he retired to Spartanburg to practice law but came back to political arena in 1930, this time to win over the man who defeated him six years before—Cole L. Blease.

Roosevelt appointed Byrnes to the U.S. Supreme Court in June, 1941. One year later he was asked to take over the Economic Stabilization directorship and gave up his lifetime seat on the nation's highest court.

Only a few months after he took command of rationing and other wartime measures on the home front, Byrnes was made head of The Office of War Mobilization—a post which carried virtual command of the entire home front.

He would have become President in 1944 when Roosevelt died. But Roosevelt, fearful that a Southern running mate would hurt his chances for re-election, had made a last-minute choice of Harry Truman as vice presidental candidate on the Democratic ticket.

Just before the German surrender, Byrnes retired but was called back to government service in the summer of 1945 as Secretary of State.

He resigned again in 1947, but accepted appointment from Eisenhower to the United Nations General Assembly while serving as governor of South Carolina from 1951 to 1955.

Byrnes undertook the race for governor largely to put through a $75 million bond issue and a three per cent sales tax so that white and Negro schools could be equalized.

"It is our duty to provide for the races substantial equality in school facilities," he said at the time.

To the end, Byrnes remained firmly opposed to the Supreme Court's decision calling for integration of public schools.

"The court did not interpret the Constitution—the court amended it," he declared.

Byrnes' views on integration caused him to break with the Democratic Party because of its hospitality to integration of the races in schools and other developments he felt were "inimical to the South."

At the National Democratic Convention in 1952, he fought the party's loyalty oath, and turned to support Eisenhower instead of the Democratic presidential nominee—Adlai E. Stevenson.

His efforts to carry South Carolina for the Republican's contender in 1952 missed in the traditionally Democratic state by the narrowest of margins.

Byrnes dropped Eisenhower in 1956 to back the late Sen. Harry F. Byrd, D-Va., for President. He took this stand he said because Eisenhower's views on integration had not been explained fully in 1952.

As a politician, Byrnes was a Capitol Hill legend. He said his most difficult duties were guiding the peace-time draft and the lend-lease measures of Roosevelt through Congress.

Signing the protocol attesting that the U.N. charter was formally in force, Byrnes remarked:

"This is a memorable day for peace-loving peoples of all nations."

Byrnes' break with his Party because "Carpetbaggers . . . in control have caused the Party to desert its fundamental principles," had an aside in a personal split with Truman.

He declared a Truman account of dressing Byrnes down was "absolutely untrue."

Byrnes lived in a fashionable, but unpretentious home in Columbia with his wife of 52 years, the former Maude Perkins Busch of Aiken. They had no children.

Byrnes had been extremely saddened by the death of his long-time secretary, Miss Cassie Connor, who passed away in Columbia several weeks ago.

Miss Connor had served with Byrnes during his years in Washington and had helped manage his business affairs since his retirement.

Rep. Solomon Blatt, speaker of the state House of Representatives, introduced a bill recently to erect a statute of Byrnes on the grounds of the State Capitol.

Blatt, a close friend of Byrnes, called him the "nation's greatest living American."

However, Blatt withdrew the bill at the request of Byrnes, who said he would rather see the state money used for "more worthwhile purposes."

[From the Charleston (S.C.) News and Courier, Apr. 10, 1972]

BYRNES DIES AT 92 IN COLUMBIA

COLUMBIA.—James F. Byrnes, former secretary of state and the man Franklin D. Roosevelt called his "assistant president," died Sunday at his home after a long illness. He was 92.

Byrnes held posts in almost every field of government. He was an associate justice of the U.S. Supreme Court, secretary of state, U.S. representative, U.S. senator, director of economic stabilization and war mobilization during World War II, a delegate to the U.N. General Assembly and governor of South Carolina.

In Key Biscayne, Fla., President Nixon ordered the flag over the White House flown at half-staff in Byrnes honor.

"He was a great patriot, who always put his country ahead of his party," the President said in a statement. "Mrs. Nixon joins me in expressing deepest sympathy to Mrs. Byrnes."

A White House spokesman said President Nixon assured Mrs. Byrnes that Mrs. Nixon would attend the funeral services as his representative.

The funeral for Byrnes will be held Wednesday at Trinity Episcopal Church in Columbia.

Byrnes' body will lie in state in the Rotunda of the South Carolina Statehouse from Tuesday afternoon until Wednesday morning.

A spokesman for the family said a memorial service would be held for Byrnes in the State House with the eulogy given by Gen. Lucius Clay.

The details of the service will be announced later.

Byrnes, who broke with the Democrats in 1952 and supported Nixon for election in 1958, received the President and a group of other dignitaries at his home for a birthday celebration in 1969. Byrnes had been hospitalized during the year, once for a mild stroke.

At the birthday celebration, Nixon said, "Never in American history has one man held more offices with distinction than Gov. Byrnes."

Born May 2, 1879 in Charleston, James Francis Byrnes went to work at an early age to help out his widowed mother. His first job was as a messenger boy in a law office at $2 a week. He also sold newspapers and did odd jobs.

In his spare time he studied shorthand and became official court reporter in Aiken County, S.C., in 1900. He was admitted to the bar in 1903 and the same year became editor and publisher of the Aiken Journal and Review, a post he held for four years. In 1906, he married Maude Perkins Busch of Aiken. They had no children.

The political career that spanned almost half a century began for Byrnes in 1910 when he scored a 57-vote upset victory over a veteran congressman. He later said he ran "on nerve and nerve alone."

Looking back over his public service career, he said in later years: "There are two happy days in the life of a man in public office—the day he is elected and the day he steps out."

Byrnes served in the House of Representatives until 1924 when he ran for senator and was defeated. He went back to practicing law, but ran again for the Senate in 1930. This time he won.

President Roosevelt appointed Byrnes to the U.S. Supreme Court in 1941, but the South Carolina native held the post for only one year.

Roosevelt asked him to take over as the first economic stabilization director, a post the president said was essential to the war effort.

Byrnes resigned the court post and took the administrative job on Oct. 8, 1942. Seven months later he was named director of the Office of War Mobilization, giving him virtual command over the home front since he had supervision over just about everything but military and diplomatic matters.

Byrnes was over-all regular of such things as wages, prices and rents. He also declared a series of emergency measures, including restrictions on travel and on national conventions and a ban on horse and dog racing.

Byrnes went to the Democratic National Convention in 1944 as a candidate for the vice presidential nomination. But Roosevelt, advised that a Southern running mate would hurt his chances for reelection, asked him to step aside. Byrnes did, and Harry S Truman was nominated.

Byrnes remained in public service almost continuously, however. He was with Roosevelt at Yalta and Truman at Potsdam.

He returned to private life just before the German surrender, but was recalled to public service by Truman who, in this, named him secretary of state to replace Edward R. Stettinius Jr.

As secretary of state, he signed the protocol formally attesting that the charter of the United Nations had come into being. He called the day "memorable . . . for all the peace-loving peoples of all nations," but cautioned that peace depended on the will of the peoples rather than on documents

Byrnes quit as secretary of state in 1947, saying he was following doctors' orders to slow down.

He broke with Truman several years later. A 1952 book, "Mr. President," written by William Hillman with Truman's cooperation, reported that Truman scolded Byrnes on the latter's return from a 1945 Moscow conference.

Truman was quoted as saying he was "tired of babying the Soviets" and did "not think we should play compromise any longer."

Byrnes denied that Truman had scolded him. He said the break with Truman did not come until he made a 1949 speech criticizing some of the president's domestic programs.

Byrnes said a Truman memorandum implied that he, Byrnes, was "easy on Russia," but he cited statements by John Foster Dulles that the U.S. policy of no appeasement had been created by Byrnes at a London meeting in 1945.

Later, discussing Russia, Byrnes likened the Soviet Union to a neighbor "who deliberately makes himself unpleasant."

"You don't get a gun and declare war on your neighbor," Byrnes said. "You finally take him to court and you continue to pray that he will mend his ways. We must follow the same course with the Soviets."

From 1951 to 1955 Byrnes was governor of South Carolina. He was named to the U.N. post in 1953. As governor, he set in motion a huge expansion program designed to equalize Negro and white schools. "It is our duty to provide for the races substantial equality in school facilities," he said.

Byrnes opposed the 1954 Supreme Court decision calling for an end to separate but equal schools. "The court did not interpret the Constitution," he said, "the court amended it."

In an 85th birthday interview he again criticized the court for overstepping what he felt were its bounds.

Asked in the same interview whether there ever would be complete integration in the South, Byrnes said: "People of the South, black and white, have made great progress. I believe that in time there will be a correction . . . of many of the things about which the civil rights leaders complain. But whether there will be complete integration is something that I would not want to make a statement about. I do not believe in it."

[From the News Courier, Apr. 10, 1972]

"GREAT STATESMAN" RECEIVES TRIBUTE FROM SOUTH CAROLINA LEADERS

(By Stewart R. King)

"South Carolina has lost its most honored citizen; the nation has lost a dedicated servant, and the world has lost a great leader."

The sentiments are those of Gov. John C. West on learning of the death Sunday of former governor and statesman James F. Byrnes.

West is in Japan attending the National Governors' Conference, but he had a statement issued through his Columbia office to say of Byrnes:

"No one served his fellow man with more distinction. . . . In his latter years he never retired from the job of serving the public with a type of guidance, moral strength and love of mankind which made his life an example for all of us to follow."

West directed all flags on state buildings to be flown half-staff until the day after his funeral.

Many other tributes were paid Byrnes Sunday.

Former Gov. Robert E. McNair described him as "truly South Carolina's outstanding statesman" who had "earned his place in the history of the nation and this state."

Sen. Strom Thurmond, who had declared a "close philosophical kinship" with Byrnes, said the nation had lost "one of the greatest statesmen of our time."

"He was a devoted friend of mine and I feel a deep personal loss at his passing," Thurmond said.

Sen. Edgar Brown of Barnwell, the 80-year-old dean of the State Senate who served as best man at Byrnes' wedding, said: "We have lost a fine American political leader.

"Although we differed on politics in later years our personal relationship never changed," Brown said.

House Speaker Solomon Blatt, 76, said of Byrnes: "His objective was to bring peace to all nations of the world. In his death I have

lost a great friend and the state has lost its most outstanding citizen."

Gen. Mark W. Clark recalled he was U.N. commander in the Korean War when Byrnes, then governor, approached him and asked him to accept the position of president of The Citadel.

"I told him I could not accept then, but I'd be happy to consider the offer when the war was over," Gen. Clark said.

Clark had close links wth Byrnes when the statesman was serving as Secretary of State. He was High Commissioner of Austria and also represented Byrnes at the Council of Foreign Ministers shortly after World War II.

"I admired him deeply and his death is a great loss," the retired general said.

Clark was president of The Citadel from 1954–1965.

Cotesworth P. Means, 82, former chairman of the State Ports Authority, was a close friend of Byrnes.

"He was one of the most prominent men of the century . . . a genius for public service," Means said.

Means recalled another side to Byrnes' character.

"He loved music," he said, "and on visits to the Isle of Palms we'd join up with two other friends to form a quartet."

Sen. Robert B. Scarborough, leader of Charleston's State Legislature Delegation, said "Byrnes was the greatest statesman in our lifetime in South Carolina. The state and nation will miss him tremendously."

[From the Greenville News, April 10, 1972]

STATE'S POLITICAL LEADERS MOURN DEATH OF BYRNES

Third District Congressman W. J. Bryan Dorn of Greenwood called James F. Byrnes "the greatest statesman this state has produced since John C. Calhoun."

"He was a national and world statesman who brought a good image to South Carolina," Dorn said. "He was in the main stream of American politics—not too far to the right of left—and was Roosevelt's right hand man."

Dorn noted that Byrnes was "the first to recognize the danger of Russia."

U.S. Circuit Judge Donald Russell, who worked with Byrnes as a law partner, called Byrnes "one of the really distinguished men of his age."

Russell said, "I grieve for his wife, who in her life was equal to his greatness. The two of them were one of the really distinguished couples of political life."

U.S. Army Chief of Staff Gen. William Westmoreland said, "It was with great sorrow that I learned today of the passing of my close, personal friend of many years, Gov. Byrnes. One of the most distinguished Americans of this century, he served his country faithfully in many critical posts in each branch of the federal government, as well as performing distinguished service to his home state. I will miss his advice and assistance as will the many others who profited from his wise council."

Sen. Edgar Brown of Barnwell, the 80-year-old dean of the state Senate, said he was saddened by the death of Byrnes, who served as best man in Brown's wedding.

"We have lost a fine American political leader," Brown said in a statement from his Barnwell home.

"Although we differed on politics in later years our personal relationship never changed."

House Speaker Solomon Blatt, 76, called Byrnes "a great statesman" and one of the country's most outstanding citizens.

Former Gov. Robert F. McNair said Byrnes was "truly South Carolina's outstanding statesman and earned his place in the history of this nation and state."

"He was an inspiration to all of us in politics and government and we join his millions of friends in mourning his passing," said McNair.

Sen. Marion Gressette of St. Matthews said South Carolina "has certainly sustained one of the greatest losses in our generation.

"He was in every way an outstanding man and all the important positions held he did so with distinction," said Gressett. "It is a personal great loss to me."

Clemson University president Robert C. Edwards said, "This nation and this state will always remember Gov. Byrnes for his unique, life-long career of public service in all branches of government.

"Clemson University will cherish his memory because he served Clemson with wise counsel as a life trustee and because he placed his records and souvenirs in the Clemson library.

"We have lost one of the greatest and most beloved members of the Clemson University family."

Mayor Richard C. Otter of Anderson said, "Unfortunately for me, I didn't know Gov. Byrnes until after he had retired, but I had a great respect for him from everything I have read about him, and considered him one of South Carolina's most outstanding statesmen. I was still in grade school when he stepped down from the Supreme Court to become the "assistant president" but reading about that certainly makes one aware of his great patriotism and service to his country.

William C. Johnston, former Anderson mayor and brother of the late U.S. Sen. Olin D. Johnston, said, "Jimmy Byrnes was a great leader. He has meant much to South Carolina, the nation and the world. His passing will be grieved by many.

State. Sen. M. E. McDonald of Iva said, "Jimmy Byrnes was one of the finest statesmen in South Carolina—in fact, in the nation. He never sought personal publicity, but when the President of the United States asks a Supreme Court justice to lay that aside to assist the President and the country, that has to be the height of a man's career. His death will be a great loss, but his influence will live on.

[From the Greenville News, Greenville, S.C., Apr. 10, 1972]

SOUTH CAROLINA STATESMAN JAMES F. BYRNES DIES: NOTED LEADER WAS 92

COLUMBIA, S.C. (UPI).—Former Supreme Court Justice James Francis Byrnes, secretary of state under President Harry S Truman and close adviser to President Franklin D. Roosevelt, died Sunday at the age of 92.

Byrnes, a key figure in mobilizing the nation for World War II and negotiating postwar treaties, died at his home here after an extended illness.

The short dapper Byrnes who also served in both the U.S. Senate and House of Representatives and was governor of South Carolina, had been hospitalized on two different occasions in recent years after heart trouble.

A spokesman at the Byrnes home said he died at 1:30 p.m.

Byrnes made one of his last public appearances in March 1969, when thousands gathered around his modest suburban home as President Nixon and many of the nation's top legislative leaders paid him a call.

"Never in American history has one man held more high offices with distinction than has Governor Byrnes," Nixon said as he stood by the frail Byrnes and his wife Maude on their front porch.

Byrnes remained in declining health in recent months and had not been able to leave his home. He had been scheduled to attend a public ceremony May 2 to unveil a statute of him on the statehouse grounds.

Byrnes was born May 2, 1879, in Charleston, S.C., just after his mother had been widowed. He dropped out of school at the age of 14 to support her, and read law books and began his public career as a small-town prosecutor.

He was first elected a Congressman in 1910 and served 14 years in the House. In 1930 he won election to the Senate and became a fast friend of Roosevelt, then governor of New York.

Roosevelt named him to the Supreme Court in 1941, and a year later at the President's request he became head of the Office of Economic Stabilization. In 1943, he shifted to head the War Mobilization Office.

Roosevelt described Byrnes as "assistant president for the home front," but passed him over to choose Truman as his new running mate. Some historians said the reason was sectionalism, and Byrnes resigned in 1945.

He returned shortly after Roosevelt's death to become secretary of state, a post he held for 567 days filled with travel to 10 international conferences, numerous confrontations with the Russians and tough peace treaty negotiations.

He was secretary of state when the first atomic bomb was dropped on Japan and attended the Potsdam Conference with President Truman.

He came away from negotiations with the Soviets highly distrustful of them, and said, "You cannot rely on the Soviet Union keeping any obligation that was not in its interest."

Byrnes was known as a "compromiser" in international negotiations and was often controversial.

Former Gen. Lucius D. Clay later credited a speech Byrnes made in 1945 in Stuttgart, Germany, as largely responsible for the failure of Communism to take root in Western Europe after World War II.

Byrnes assured Western Europe that U.S. military forces would remain as long as there was a Soviet threat. Clay said later this was Byrnes' "most significant contribution" in a lifetime of service.

Relations between Byrnes and Truman later worsened and Byrnes resigned to return to South Carolina in 1947. He wrote, set up a foundation to give scholarships to orphans, and returned to public life in 1951 after his election as governor, serving until 1955.

As governor, Byrnes launched a massive program for construction of schools for blacks in a last ditch effort to avoid desegregation.

As the nation's Democratic politics became more and more liberal, he rebelled and supported Harry Byrd of Virginia for president in 1956. He never again backed a Democratic presidential candidate. He was a key southern backer of Barry Goldwater in 1964 and told Nixon in 1968 he hoped Nixon won.

[From the Greenville News, Apr. 10, 1972]

JAMES FRANCIS BYRNES

When a great and noble man dies, he leaves behind an inevitable void in the society in which he lived.

So it is that a deep sense of sadness and deprivation pervades South Carolina and extends throughout the nation and the free world because James Francis Byrnes died yesterday at the age of 92. The loss is especially keen to those many thousands who had some sort of personal relationship with the remarkable "Jimmie" Byrnes.

A half-orphan who dropped out of school in order to support his mother, he rose to the heights in the councils of the nation and the world, yet never lost touch with the people he served and represented. At the time of his death South Carolinians were planning to honor Mr. Byrnes by erecting a bronze bust of him on the State House grounds on his birthday next month.

As long as a quarter century ago, Mr. Byrnes had built for himself a secure, high place in the history of his state and nation. He may have been unique in American his-

tory, having served at every level of government from court reporter to the General Assembly of the United Nations, and in all three branches of government—legislative, executive and judicial.

News stories throughout the world today are recounting his remarkable career in Congress, on the Supreme Court, as "assistant president" during World War II, as secretary of state in the crucial post-war period and as governor of South Carolina. The story is familiar to South Carolinians and is well known far outside this state.

By chance, a group of out-of-state college students was in Greenville yesterday when word of his death was received. These young people, who never knew the man, still were able to discuss his great career because they had studied him in history courses.

The hallmark of Mr. Byrnes' career was service. After a brilliant career in Congress, he was appointed to the Supreme Court. But he left that secure post in order to serve as President Roosevelt's home-front assistant in World War II. Although disappointed because sectionalism prevented his nomination for the vice presidency, Mr. Byrnes gave the nation his services as secretary of state in the Truman administration and participated unselfishly and brilliantly in the negotiation of vital post-war treaties, which bolstered the free world.

He capped his career by returning to South Carolina to be the governor who put over the vast school reorganization and school financing program which greatly expanded educational opportunity in this state. Only James F. Byrnes could have persuaded South Carolina to accept the tax program upon which public education now rests.

Mr. Byrnes served for a time as a delegate to the United Nations, whose charter he had signed as secretary of state. That was the final step on the long journey of public service which started in the Aiken County courthouse in 1900. It was indicative of his keen insight that he chose to retire gracefully, rather than "go to the well once too often" as so many people in public life are prone to do.

In retirement he continued to take an active interest in public affairs, speaking out on occasion and giving his support to people he trusted for public office. President Nixon received his support in 1968 and publicly acknowledged his and the nation's debt to Mr. Byrnes when he visited the South Carolinian on his birthday in 1969.

One of Mr. Byrne's proudest achievements was creation of the Byrnes Foundation to give college scholarships to orphans. This continuing organization was financed by sales from two books which he wrote on the basis of his remarkable experiences. The numerous Byrnes scholars of today and yesterday are especially saddened at the passing of a man they came to know as their "Dad." Many others will benefit from the Byrnes Foundation in the years ahead.

Mr. Byrnes was no "stuffed shirt." One humorous episode late in his career tells much about the man.

Not overly fond of the nickname, he nevertheless was proud that most people referred to him as "Jimmy" Byrnes (close friends called him "Jim".) Once while he was campaigning for governor, someone asked if he considered it disrespectful for young boys and girls to call him "Jimmy" as they shook hands with him.

"Certainly not," was Mr. Byrnes' mirthful reply. "When a youngster calls me 'Jimmy,' I know I've got his daddy's support."

That is only an example of the delightful wit which brightened Mr. Byrnes' deep wisdom and knowledge and endeared him to all who came into his almost boundless circle of friendship.

"Often it is said at a time like this, "a mighty oak has fallen." That sentence is inadequate for Mr. Byrnes. Physically small, he was a giant in the forest of men of his time, and he was the tallest tree that ever stood in South Carolina.

[From the Greenville News, April 10, 1972]

MANY PEOPLE VISIT JAMES BYRNES ROOM

(By Walt Belcher)

CLEMSON.—To the young student at Clemson who know the name James F. Byrnes, it was like something already a part of history.

At Clemson University's library is the James F. Byrnes room. It is something similar to a small museum. The young lady at the desk is just 19 years old, but she knows about Byrnes and says that many people come to the room, especially during football season when there are a lot of visitors on campus.

To most of the students the room is another part of campus. In it one can see pictures of a dashing young Byrnes, a more recent portrait and a bust, a sword given to Byrnes by Gen. George Patton and another sword from Gen. Douglas McArthur.

There are documents and pictures of Byrnes with former President Franklin Roosevelt and a huge robe given Byrnes by former ambassador to Moscow Joseph E. Davis. The robe was once worn by a underground Russian priest.

Many other items in the room tell of the life of Byrnes. It was dedicated in 1966 and in one of his last public appearances Byrnes came to Clemson and told the audience that when he stepped down as governor of South Carolina the National Archives in Washington, the Roosevelt Library at Hyde Park and the congressional library had each asked for a collection of his papers and memorabilia.

He turned them all down so that the people of South Carolina, who put him in office, could have a recorded history of his colorful life.

In a room adjacent to the Byrnes room is a collection of his memos, letters, books, and correspondence for his years in Washington. The file does not contain much of the recorded work of his 14 years in the House nor his ten years in the U.S. Senate.

It does contain files of personal memoranda between him and President Roosevelt during the war period. Byrnes had said that he served as Director of War Mobilization, and Roosevelt called him "the assistant president".

In his collection also are recorded press conferences and minutes of international meetings at the close of World War II. Byrnes said during the dedication that he saw "no reason why these conversations should not be made public." At the time the conferences were going on, however, the Soviets had tried to muzzle most of the proceedings from the public.

Also in the collection are the drafts of opinions he handed down while on the Supreme Court and the original manuscripts of two books he wrote: "Speaking Frankly" and "All in One Lifetime."

In his closing remarks on that day when the room first opened he said, "It has always been my intention to censor my files to make sure that no friend would be embarrassed by some statement made to me but I find that at my age I have neither the inclination nor the time to undertake such a task."

"After World War II when I visited battlefields and hospitals in Germany, France and Russia, I thought the people of all nations would hate the suffering and devastation of war that we could look forward to at least a half century of peace, but soon after we began drafting peace terms, it was evident that Soviet leaders had different objectives: they wanted to dominate the world. Then I announced that our policy should emphasize firmness more than patience and urged military strength be increased.

After twenty years I have not changed my views. My hope is that as people of inquiring minds read these papers, they will be inspired to take a greater interest in world affairs and realize the United States must remain strong if our people are to remain free."

[From the Greenville News, Apr. 10, 1972]

BYRNES EULOGIZED BY MANY LEADERS

The death Sunday of South Carolina's elder statesman, James F. Byrnes, has brought reactions from around the nation and especially from throughout South Carolina.

Just about everybody has one teacher he remembers clearly from school days. Five brothers and sisters from the Bootle family have a special place in their memories for Mrs. Thomas V. Farrow of Greenville, who taught from 1909 to 1913 at the Hendersonville school they attended.

[From the Greenville News, Apr. 10, 1972]

BYRNES RITES SET WEDNESDAY

COLUMBIA (AP).—Funeral services for James F. Byrnes, who died Sunday, will be held Wednesday at the Trinity Episcopal Church in Columbia.

Byrnes' body will lie in state in the Rotunda of the South Carolina State House from Tuesday afternoon until Wednesday morning.

A spokesman for the family said a memorial service would be held for Byrnes in the State House with the eulogy given by Gen. Lucius Clay.

[From the Greenville News, April 10, 1972]

PEOPLE OF UPSTATE SADDENED BY DEATH OF JAMES F. BYRNES

The death of James F. Byrnes touched a great spectrum of people in the upstate, from those who knew him personally to those who knew him only as an historic figure.

Thomas H. Pope, long-time Democratic party chairman in Newberry County who ran against James F. Byrnes in the race for governor in 1950, said that Byrnes' death is a "great loss to the nation."

Pope, an attorney and a former speaker of the House, remembers that he and Byrnes were "always on very friendly terms. We saw each other over the years and I enjoyed talking with him. He was a good conversationalist," Pope said.

Others in the upstate voiced similar sentiments about Byrnes. Rep. Butler C. Derrick Jr., of Edgefield said, "Byrnes was without question the greatest statesman South Carolina has produced since John C. Calhoun. He served the state and nation and in later years continued to do so through the Byrnes scholarship program," Derrick said.

He added, "I think that South Carolina has suffered a tremendous loss."

Sen. John Drummond of Greenwood: "He was always a perfect gentleman and well versed in every subject. Byrnes started the movement to get South Carolina as one of the leaders in the New South."

Charles Sanders, public relations director for Greenwood Mills, and a former Columbia newspaperman: "Byrnes was a great American who meant a great deal to his state and country."

Norman Younts, an Aiken real estate man: "Byrnes death is a tremendous loss to South Carolina and the nation, because of his impact for the past 40 years on industrial and economic growth of South Carolina areas."

Younts said he met Byrnes on several occasions and was very impressed by his "very noticeable humility toward people." He said that Byrnes never let his extreme prominence overshadow his ability to communicate with people at all levels.

Mrs. George R. Summer, wife of the Newberry County coroner: "I think he was just a fine fellow and did a good job in office."

[From the Greenville News, Apr. 10, 1972]

HE SELECTED CLEMSON UNIVERSITY: RECORDS OF HALF CENTURY OF SERVICE LEFT BY BYRNES

CLEMSON.—James F. Byrnes left records of a half century of public service with the people that launched him into history beside many of the most powerful men of the 20th century.

Details of his rise from court reporter in South Carolina to Franklin D. Roosevelt's "assistant president" through his stormy term as Harry S Truman's secretary of state are preserved in the Clemson University Library.

His vast collection of papers, documents and souvenirs were requested by the Congressional Library, the Roosevelt Library and the National Archives.

"However, I preferred that whatever I might have that was deemed worthy of preservation should be placed in South Carolina whose people had given me the opportunity to render public service," he said when the collection was donated to the school in 1966.

Byrnes said he selected Clemson because trustees of the University had requested his files in a unanimous resolution. He was a lifetime trustee of the land-grant college.

His souvenirs, including a copy of the Japanese surrender and the United Nations Charter which he signed as secretary of state, are encased in glass in the Byrnes Room.

The chair, now cracked, he used in the U.S. Senate from 1931–41, sits behind the desk he used as governor of South Carolina from 1951–55 during the waning years of his public career. The room also contains a small desk he sat in from 1911–25 as a member of the U.S. House of Representatives.

The imposing black robe he wore as an associate U.S. Supreme Court justice in 1941–42 hangs empty across the room from the personal flag he used as secretary of state from 1945–47.

His personal letters include correspondence with Presidents Woodrow Wilson, Harry Truman and Dwight D. Eisenhower.

Large, bulky scrapbooks hold the news accounts and pictures of Byrnes and other international leaders during conferences which shaped world history.

His papers contain correspondence between Franklin D. Roosevelt and Josef Stalin. Some are sharply worded, some informal and controversial.

Included in the collection is an extensive file of personal letters between Byrnes and Roosevelt when the South Carolinian was director of war mobilization during World War II.

There are records of international conferences during the war which had been kept confidential because the Russians objected to publicity.

In donating the papers in 1966 Byrnes said, "Now, 20 years later, I see no good reason why these conversations should not be made available to the public. The people who fought the war should know all about our efforts for peace."

He dedicated the collection in the hope that "as inquiring minds read these papers, they will be inspired to take a greater interest in world affairs and realize that the United States must remain strong if our people are to remain free."

[From the Greenville News, Apr. 10, 1972]

AMERICA IS INDEBTED TO JAMES BYRNES

Local businessmen, civil leaders and Greenville city and county officials joined others from throughout South Carolina Sunday in expressing their sadness at the death of James F. Byrnes.

U.S. Rep. James R. Mann, Fourth District congressman, echoed the sentiment of the entire county by saying, "The nation has lost a great statesman. His life of service to country places every American in his debt.

"It was my great privilege to be closely associated with him, when, after his remarkable service in the nation's government, he returned to serve South Carolina as governor," the congressman said.

"I was a member of the state legislature which followed his leadership in the initiation of programs leading to greater educational opportunity for all the children of South Carolina. He honored me by appointing me in 1953 as solicitor of the 13th Judicial Circuit," Mann said.

"His life of public service leaves many monuments of progress, of justice and of increased opportunities for his fellowman.

"We will miss him, but he leaves much for us to cherish, to enjoy and to emulate."

Robert T. Ashmore, former Fourth District congressman, said of Byrnes:

"He is one of the greatest South Carolinians of all time, and he will be missed by a multitude of friends not only in this state but throughout the country."

Ashmore noted that during Byrnes' term as South Carolina governor he was a proponent of the statewide sales tax with all the money to go for educational purposes.

"He did a wonderful job in improving our educational standards in the state," Ashmore said.

Ashmore said he first met Byrnes when Byrnes was campaigning in Greenville County during the late 1920s in his first race for the U.S. Senate.

"He was a most impressive man with a fine personality. You couldn't help being impressed by both his sincerity and his ability even in those early days," Ashmore said.

Dr. L. P. Hollis of Greenville, who served as vice-chairman of the South Carolina Educational Finance Commission which Byrnes organized shortly after becoming governor in 1951, had these comments on Byrnes' impact on the state's educational programs.

"Byrnes was chairman. He attended practically all the meetings of the commission. This was his baby—he thought he'd give a boost to education and he realized the need we in this state had for the boost.

"He thought the state could go ahead and give Negroes good facilities if he could get a three per cent sales tax passed, and he thought this would satisfy them.

"He had no trouble having the legislature to go along with his tax with which to build better schools and the first couple of years nearly all money went to new schools for Negroes. It enabled us to get some badly needed good school buildings.

"Now the bringing of the three per cent tax was the easiest thing under his direction, and this master stroke showed his ability to get things done and to lead people. I don't think anyone else in South Carolina could have gotten the sales tax passed."

Hollis served on the S.C. Education Finance Commission while Byrnes was governor, 1951–54. Hollis had just retired after serving 28 years as superintendent of the Paker District Schools.

C. D. Wyche, Greenville attorney, who first met Byrnes when Wyche was serving as secretary to U.S. Sen. Benjamin Ryan Tillman in the period between 1912–16 during which Byrnes was congressman from the district, and knew him well for 50 years said:

"Jim was one of the greatest men South Carolina has produced.

"He had as little concern about money and material things as any man in public life that I have known.

"He was devoted to the public service and the ambition of his life was to render the best public service. No offer or temptation for monied salary or compensation was sufficient to lure him away from public service."

Wyche said it was this feeling of wishing only to serve the public good that made him able to step down gracefully as U.S. Supreme Court Justice at President Franklin D. Roosevelt's request to become his director of the Office of Economic Stabilization and then director of War Mobilization during World War II.

It also allowed him to support Dwight Eisenhower and Richard Nixon for presidents although Byrnes was a Democrat Wyche said.

"He certainly got no personal reward for supporting these men. He did what he thought was in the best interest of his country," he said.

Wyche said he never knew a man in public life who had more personal intimate friends.

"He was very cordial and pleasant to everybody. He never felt himself above or below anybody. He thought of everybody as being equal," Wyche said.

Senator Charles G. Garrett, Greenville, said: "South Carolina has lost one of our most illustrious sons. His life shall truly serve as an inspiration for any person who serves his fellowman in government.

"From an orphan boy, he rose to great heights in the various facets of national and international government. If there ever was a self-made man, James F. Byrnes filled that category.

"Even though he associated with the various rulers of the world, he never lost his humility. I particularly admire this trait that he always possessed.

"I am proud to have served with him in the legislative branch of government during his term as governor. I have lost a highly respected friend."

Former mayor Cooper White said: "I think this is a loss not only to every South Carolinian, but to the nation as a whole.

"His was a record of unparalleled service and he will always be remembered with deep respect and admiration as one of the greatest Americans of all time.

"Would that we could be blessed with statesmen of his caliber during these trying times in which we live."

Former Greenville mayor David G. Traxler expressed his grief upon hearing of the death of Byrnes: "I certainly am saddened by the loss of such a great statesman. He probably was the greatest statesman the state has ever produced, having been a congressman, senator, governor, associate justice of the U.S. Supreme Court, secretary of state and advisor to President Roosevelt. Fact is, he was often referred to as the 'second president.'

He certainly brought credit to the state of South Carolina and his loss will not only be felt by the citizens of South Carolina, but the nation as a whole," Traxler said.

"It is a sad day for the United States.

"Also, on a personal note, he was a close lifelong friend of Roger C. Peace. And my father, David B. Traxler, was a close friend of Byrnes when he was in the Senate."

Sen. Harry A. Chapman Jr., Greenville, said: "Mr. Byrnes had the most illustrious career of any modern-day South Carolinian. He served in more important positions than any man in the history of the state and, in my opinion, served his state and nation most capably.

"During his term as governor, he did much to improve our public education system. I think that was one of the things his term was marked for, his dedication to a quality education system."

Rep. Nick A. Theodore, Greenville, said: "There was a dedication planned for him in the near future, and I am very sorry it will have to be done posthumously. I'm sure he would have appreciated this gesture on the part of the General Assembly and the people of South Carolina in recognition of his contributions to the * * *

"His death, of course, will certainly be felt by all citizens of our state. Even though he was not quite as active in his retiring years, all the leaders of the state had the op-

portunity and benefit of his advice and counsel.

"I know all of South Carolina, along with the rest of the nation, certainly will mourn his death and the loss of a true statesman."

Rep. Rex Carter, D-Greenville, Speaker Pro Tem of the State House of Representatives, said: "I think South Carolina and the nation has lost one of its greatest statesmen. He probably more than any one person gave constructive contributions to the progress of this state and nation."

Rep. Carolyn E. Frederick of Greenville said: "The life and achievements of James F. Byrnes have already emerged as another rich heritage for South Carolinians. He will be remembered as a great statesman, governor, U.S. Senator, Secretary of State, Supreme Court Justice.

"But perhaps he will know greater immortality through the lives he helped mold through his wonderfully personal Byrnes Scholarship programs.

"I am saddened for South Carolinians not to have the privilege of honoring him personally as planned on May 2, when his statue was to be unveiled on the statehouse grounds. The date was chosen as the anniversary date of his birthday and wedding.

"As we mourn his passing, we give thanks for his life of service."

Dr. F. W. Loggins, a longtime superintendent of Greenville city schools served on the S.C. Board of Education while Byrnes was governor.

"I thought very highly of his abilities and his passing is a great loss to the state," Loggins said.

Thomas A. Wofford, Greenville attorney and former legislator, said of Byrnes' passing:

"Even though it has been expected it still comes as a shock.

"He was a great South Carolinian and held more high offices with greater distinction than any American I have known."

"I had the pleasure of meeting him only once," Greenville Mayor Max M. Heller said. "But he was without a doubt one of the greatest American figures that ever lived. The thing that impressed me when I met him was that he was so humble."

Heller said he met Byrnes "seven or eight years ago," after the statesman had retired from public service.

Byrnes was governor of South Carolina during four years of J. Kenneth Cass' tenure as mayor of Greenville.

Case, who headed city government from 1947 to 1961, said, "It was my privilege as mayor here to become associated with Mr. Byrnes on numerous occasions. He was one of our greatest statesmen and I know all of South Carolina will regret hearing of his passing . . . We're all going to miss him."

County leaders of both major political parties had praise for Byrnes.

"He was one of the really great Americans, and the very great South Carolinian. He made an indelible impression, I think, on the history of our state and nation," said Ralph W. Drake, county probate court judge and chairman of county Democrats.

GOP chairman Raymond B. Smith said Byrnes was such a great leader he was "beloved by everyone."

"The world, we can say, has lost a great leader, and South Carolina has lost a beloved statesman, humanitarian, and friend.

"He lived such a full life, he's left a path that we can all try to follow," Smith said.

The president of Furman University, Gordon W. Blackwell, said: "James F. Byrnes was a great South Carolinian, a renowned statesman who was always an enthusiastic supporter of higher education.

"With his own resources he made it possible for many young people to attend college. He will be surely missed in our state."

Bob Royner, a Greenville clothing store owner and a state resident for 30 years, said, "There is no doubt that he was one of the greats of South Carolina and he will be missed."

[From the Greenville News, Apr. 10, 1972]

MAJOR MILESTONES IN THE LIFE OF JIMMY BYRNES

These were the major milestone years in the many-officed life and career of James F. Byrnes.

1879—Born in Charleston May 2, son of James Francis Byrnes, who died shortly before his son's birth, and Mrs. Elizabeth McSweeney Byrnes.

1893—Left school at 14 to help support his mother. Using shorthand he had studied to fill a job with a Charleston law office.

1900—Appointed official court stenographer for the Second Judicial Circuit and moved to Aiken.

1903—Admitted to the bar after studying law while working as a court stenographer. Became part owner in a credit purchase of the Aiken Journal, which he served as editor while he began a private law practice.

1906—Married the former Maude Perkins Busch on his 27th birthday.

1907—Severed his connection with Aiken newspaper to enter politics without conflict of interest.

1908—Elected solicitor (prosecuting attorney for the Second Judicial Circuit).

1910—Elected to the U.S. House of Representatives from South Carolina's Second Congressional District to begin a tenure of 14 years.

1925—Resumed his private law practice, this time in Spartanburg, after a close but unsuccessful bid for the U.S. Senate.

1930—Elected to the U.S. Senate.

1936—Reelected to the Senate by overwhelming majority.

1941—Appointed, in June to the U.S. Supreme Court by President Franklin D. Roosevelt.

1942—Declined "leave of absence" and resigned from the Supreme Court to serve as Roosevelt's "assistant president," officially director of the Office of Economic Stabilization, an appointment he accepted only for the duration of its need.

1943—Named director of the Office of War Mobilization, broadening scope of his "assistant president" responsibility.

1943—Resigned his government position March 21 because he considered need of his services fulfilled, particularly in wake of the Yalta conference and his role there as a key foreign policy adviser. Appointed secretary of state by President Harry S Truman July 3 after the April 12 death of President Roosevelt. Awarded, in August, the Distinguished Service Medal, 14th civilian ever to receive the high decoration, for his World War II service to the nation.

1947—Resigned, Jan. 20, as secretary of state, after signing post-World War II treaties with five nations, long in negotiation. Retired in Spartanburg from public life. His first book, "Speaking Frankly," was published. The proceeds went to create the Byrnes Foundation, designed to help orphans further their education.

1950—Elected governor of South Carolina, a candidate by persuasion of friends in the state.

1953—While governor, was appointed by President Dwight D. Eisenhower, when he had endorsed via an independent state of electors in South Carolina, to serve as a representative to a session of the General Assembly of the United Nations. ("It was difficult to believe that it was 1953 and not 1946, when I had spent most of the year negotiating with the Soviets . . . We had the same frustrating methods employed by the Soviet Union and the satellites.")

1958—His second book, "All in One Lifetime," was published.

1966—The Byrnes papers, files, historic memoranda were presented for permanent preservation to Clemson University.

AT AGE 14 HE LEFT SCHOOL TO HELP HIS MOTHER

James F. Byrnes left school at 14 to help support his widowed mother—but his education never ended.

He was fond of quipping in the years of his greatest prominence that he was "being educated by degrees."

He was awarded honorary doctorate degrees over the years—the first was from the College in Charleston in 1935—by Presbyterian College, John Marshall College of Jersey City, N.J., the University of North Carolina, The Citadel, the University of South Carolina, Columbia University, Furman University, Wolford College, Washington and Lee University, Clemson University, Yale and the University of Pennsylvania.

But his true education was self acquired. Childhood mastery of shorthand got him his first job in a Charleston law office, where he began methodically reading through libraries toward eventual admission to the bar.

His avid reading habits continued throughout his lifetime while he became expert in world affairs during half a century of personal involvement.

HIS SHORTHAND "UNDID" EDITOR

Shorthand was a more than casual factor in the career of James F. Byrnes.

Under urging and influence of his mother, he learned formal shorthand as a child, then used it when he went to work at 14 in a Charleston law office.

He used it as a prosecuting attorney, in his private law practice, in the Congress, in the Senate and it served him to take almost verbatim notes of conference highlights while he was "assistant president" during World War II, then when he was secretary of state.

He used it, in fact, so regularly that only a tape recorder could have served him better.

And he took it so for granted in his later years that it produced an antedote which still wrinkles the brow of Greenville News editor.

The editor asked Byrnes for a copy of a certain statement so it could be used for verbatim accuracy. Byrnes handed him graciously a folded sheet of paper and only later did the editor discover it was in shorthand—and until he had it transcribed, of no more value to him than Sanskrit.

[From the Columbia Record, Apr. 10, 1972]

LEADERS MOURN SOUTH CAROLINA STATESMAN

The death of South Carolina statesman James K. "Jimmy" Byrnes brought comments of grief and respect from both national and state leaders.

President Nixon ordered all flags flown at half-staff until the day after Byrnes' funeral.

Nixon paid a special visit to Byrnes in 1969 to congratulate the former Governor on his 90th birthday.

Standing on the porch of Byrnes' home Nixon said, "You couldn't come to us, so we came to you."

The President spoke of Byrnes' career then saying, "Never in history has one man held more top offices with more distinction than Governor Byrnes."

The office of South Carolina Governor West, who is in Japan, issued a statement declaring the day of Byrnes' funeral a day of mourning throughout the state.

West's statement said, "The world is saddened at the death of its distinguished citizen, James F. Byrnes. The State of South Carolina has lost its most honored citizen; the nation has lost a dedicated servant; and the world has lost a great leader.

"Beyond the span of his 92 years, Governor Byrnes' contributions to mankind will

live as a permanent monument to his courage and wisdom."

Sen. Strom Thurmond, R-S.C., said, "I feel a deep personal loss at the death of Gov. Byrnes. He was a man who served his state and nation with great distinction for many years. He was recognized the world over for his great achievements but nowhere more so than in South Carolina which elected him its governor after he had served as Congressman, Senator, Supreme Court Justice, 'assistant President', and Secretary of State.

"He was a loyal friend and an inspiring leader and all of us are saddened at his death.

West said he received the nwes of the death of Byrnes from the U.S. Embassy in Toyko.

"Governor Byrnes was a man born to the moments of challenge," said West. "In days of economic need and depression he was a man of strength and compassion. In days of war, he was a man of peace who steered the world out of chaos of oppression and tyranny. In days of uncertainty and turmoil in the wake of war, he was a man of deep understanding and devotion to the cause of peaceful harmony among all men."

"I sent a cable of condolence to Mrs. Byrnes," West said. "In my telegram to Mrs. Byrnes I said he will be recorded as one of the nation's and the world's truly great statesmen of our time."

Former Gov. Robert McNair said, "Byrnes wrote a place in history for himself and South Carolina. He followed the great traditions of Rutledge and Calhoun.

"He was one of our nation's truly great statesmen. He had a place in the hearts of all South Carolinians. We will all miss him very much."

Byrnes' former law partner, U.S. Circuit Judge Donald Russell, called Byrnes "one of the really distinguished men of his age."

Russell said, "I grieve for his wife, who in her way was equal to him in his greatness. The two of them were one of the really distinguished couples of political life."

Solomon Blatt, Speaker of the South Carolina House of Representatives, was Byrnes' personal friend for more than 60 years.

Blatt said, "I knew him well and watched his career with a great deal of interest. "He was the greatest American in the 77 years that I've lived. He served his circuit, congressional district, state and nation, as well as all the world, with great ability and distinction."

The Speaker said Byrnes "was actually President, although not in name, during the serious times of the Roosevelt Administration. In his death I've lost a real friend."

President Pro-Tempore of the South Carolina Senate Edgar A. Brown had his differences with Byrnes, but he speaks of him as "a life-long friend."

Brown said, "He was one of the great American statesmen of his time and one of the most acute political leaders this state has ever produced."

Brown concluded, "He will be missed by us all."

Sen. Ernest Hollings was out of the country, but issued a statement through his office.

Hollings said he was "deeply moved by the death of Jimmy Byrnes."

The Senator said he had a deep personal respect for Byrnes and recognized him "as one of those rare individuals, who during his lifetime, participated in all three branches of government."

Hollings headed back to the United States and plans to attend the funeral.

Gen. William Westmoreland, a native South Carolinian and a friend of Byrnes, spoke of him from his headquarters in Fort Myer, Va.

Westmoreland, whose West Point appointment was obtained by Byrnes, said, "It was with great sorrow that I learned today of the passing of my close personal friend for many years.

"One of the most distinguished Americans of this century, he served his country faithfully in many critical posts in each branch of the federal government as well as performing distinguished service to his home state.

"I will miss his advice and assistance, as will many others who profited from his wise counsel."

Byrnes helped many people start political careers during his lifetime, and one of them was U.S. Rep. James Mann, D-S.C.

Mann said, "He contributed substantially to my career by appointing me solicitor of the 13th circuit in 1953.

"His contributions to the state and nation are of lasting impact. We will miss his leadership, but South Carolina will record him as one of its greatest citizens."

Byrnes was appointed a Life Trustee of Clemson University in 1941. Clemson President Robert Edwards said, "This nation and this state will always remember Governor Byrnes for his unique and life-long career in public service and all branches of government.

"Clemson will cherish his memory because he served as a Life Trustee and because he placed the records and souvenirs of his remarkable life in the Clemson Library.

"We have lost one of the greatest and most beloved members of the Clemson University family."

Perhaps those who remember Byrnes best are more than 300 Byrnes Scholars who knew him simply as "Pop."

One of those scholars is the Rev. Mr. Hal Norton of Marion, one of the first Byrnes Scholars.

Mr. Norton said, "I don't know how I could have gone to college without his scholarship, but he gave much more important things than what he gave in dollars. In the 23 years I have known him, I never wrote that he didn't write back on any matter. His words of wisdom and the companionship he shared through the years were far more enriching than any money he could have spent. Any problem was his problem."

[From the Columbia Record, Apr. 10, 1972]

JAMES FRANCIS BYRNES

South Carolina is a small state. What it lacks in numerical and geographical size it must make up in leadership. It has a history of outstanding leaders, but none has exceeded in national or worldwide impact the role of James F. Byrnes.

When the United States was enthralled in the global depression of the early 1930s and Franklin D. Roosevelt came to the White House to give hope to the nation, the man he chose to steer his legislative program through the Congress was the South Carolinian who had proved his powers of leadership on the floor and in the cloakrooms of the Senate.

His leadership was rewarded by appointment to the Supreme Court, but he forsook this lifetime honor when the crisis of World War Two called for his great talents in assignments that designated him as "Assistant President of the United States." While President Roosevelt concentrated his attention on the fighting of the war, Mr. Byrnes headed the vast effort on the home front.

When Mr. Roosevelt died in the climactic last days of the war, Vice President Harry S. Truman was vaulted into the position of Chief Executive without sufficient knowledge or preparation for the complexities thrust upon him. One of his first acts was to enlist the man who had the experience and background to serve as his right arm. He appointed Mr. Byrnes as his Secretary of State, where he rounded out his career of higher service in all three branches of the federal government than any other American.

History probably will record that his greatest contribution to world affairs lay in his performance as the architect of American foreign policy. Mr. Byrnes reversed the plans for a permanent prostrate, agrarian Germany into a design for a country that would be accepted back into the community of nations, assume the lead in the revival of Western Europe, and become one of the United States most valuable and loyal friends in the international community.

He was also one of the organizers of the United Nations, which, like the Roosevelt New Deal, started as an ideal vehicle for progress and confidence and continued in that role until it departed from the policies of its charter.

After completing his career of outstanding national service, Mr. Byrnes returned to his native South Carolina and became its Governor. His State House administration was marked by his programs for education and mental health. That was in the days before the 1954 Supreme Court decision for the desegregation of schools became effective and Mr. Byrnes made his greatest effort to equalize the educational opportunities of the Negro children of the state. Sales tax enactment was primarily for that purpose. South Carolina's leadership in the mental health field is due largely to the thrust that Mr. Byrnes gave it as Governor.

After retiring from elective service, Mr. Byrnes and his wife, the former Maude Busch, moved into a home in Columbia, where he continued to maintain his interest in public affairs, even through his terminal illness. Mr. and Mrs. Byrnes had an exemplary marriage of cooperation and devotion. They had no children of their own, but through the Byrnes scholarship program, directed primarily toward boys and girls who, like himself, were orphans, the Byrneses had a parent-like relationship with 200 young people.

When Mr. Byrnes died Sunday, work was already under way for the erection of a statue in a corner of the State House grounds as the tribute of a proud and grateful state. It will be dedicated on May 2, which would have been his 93rd birthday, as a lasting memorial to one of the greatest men of one of the greatest eras in world history.

[From the Washington (D.C.) Post, Washington, April 10, 1972]

JAMES F. BYRNES: A LIFE OF DISTINCTION

James F. Byrnes, 92, former senator, Secretary of State and Supreme Court Justice who played a major role in American public life from the New Deal through the Cold War, died yesterday in Columbia, S.C., after a long illness.

Mr. Byrnes was hospitalized several times in 1969, once for a mild stroke.

During World War II he oversaw the nation's economy, holding powers so broad he was regarded by some as the "assistant president."

A courtly native of Charleston, S.C., where he left school at 14 to clerk in a law office, Mr. Byrnes had a career in public service that spanned 47 years, from 1908 when he became circuit solicitor, to 1955 when he stepped down as governor of his state. His career also included seven terms as a congressman.

"Never in American history has one man held more offices with distinction," President Nixon said in a 1969 tribute. The White House flag was ordered down at half-staff yesterday.

[From the Washington Post, Apr. 10, 1972]

JIMMY BYRNES, HOLDER OF HIGHEST OFFICES

(By Bernard D. Nossiter)

James Francis Byrnes was a Charleston lawyer, Congressman, Senator, Supreme

Court Justice, wartime czar of the economy, Secretary of State, governor, and, in the end, a courtly man of resistance to a changing world.

He was something else. In a very real sense, his life bridged a 19th century America where a poor boy learned law clerking for his elders and the 20th century of superpower America whose cold war role he first defined.

Byrnes fit no simple label.

A convinced believer in segregating black from white, he was the first district attorney in South Carolina's Second Judicial District to accept Negro testimony and prosecute as a crime the assault of one black on another.

A powerful foe of Franklin Roosevelt's second term social measures, he was the unofficial Senate whip who successfully steered to passage the early New Deal legislation.

A state's rights, free enterpriser, who denounced Truman's "statism," he presided in World War II over the most elaborate economic controls the country ever saw.

A party regular who scorned Dixiecrat defections, he gave his support to Republicans Eisenhower, Nixon and Goldwater.

One of those Republicans, Richard Nixon, went to Columbia in May, 1969, to pay tribute to Mr. Byrnes on his 90th birthday. "Never in American history has one man held more high offices with more distinction than has Gov. Byrnes," said the President.

CLOAKROOM DEALER

Slim, elegant, a gracious compromiser, Mr. Byrnes was a Senate man as the term is understood in the South. He rarely spoke on the floor. But in the cloakroom and in his office, over bourbon and branch water, he wheedled and bargained with a flair that another Senator from Texas was later to make famous.

In his first House term, he noticed that 23 other Congressmen also had bills to build Federal roads in their districts. So he quietly brought them together and formed a caucus that led to the creation of a new House committee.

His skill as a negotiator, as a Senate man, led Harry Truman to turn to him as his chief diplomat when President Roosevelt died. But in the long negotiations with the Russians after the war, Mr. Byrnes stood rocklike—too inflexible in the eyes of some—against what he considered the Soviet Union's bid for expanding power.

GRANDSON OF IMMIGRANTS

Of medium height, with piercing gray eyes, he adopted the charming and easy aristocratic manners of the older and better born lawyers who made him their protege.

The grandson of Irish immigrants who had struggled unsuccessfully on the land, Mr. Byrnes was born in Charleston on May 2, 1879. His father had died a few months before and his widowed mother turned to making dresses to support her Jimmy and his older sister. He sold pies in the Fifth Ward, learned shorthand from his mother and attended St. James Parochial School. (He hadn't met Maude Busch then and was still a Catholic.)

At 14, he left school to clerk in Judge Benjamin Rutledge's firm and the judge looked after his learning. At 21, his shorthand won Mr. Byrnes a competition for court stenographer. He rode the circuit with Judge James H. Aldrich, read more law and remembered the names of hundreds of jurors.

In 1903, he was admitted to the bar and three years later, on his 27th birthday, he married Miss Busch and converted to her Episcopalian faith. The spiteful said he did it less to please his belle than the Populist voters of South Carolina.

He bought the Aiken *Journal and Review*, got himself elected solicitor, or district attorney, and came to Washington in 1911, winning his House seat by 57 votes.

As a Congressman, he kept his mouth shut and his eyes open. He stayed close to powerhouses like Speaker Champ Clark and John Nance Garner, was rewarded with a place on the Appropriations Committee and helped a young assistant secretary of the Navy named Franklin Delano Roosevelt get the money he wanted for ships.

By 1924, he was ready to spread his wings and try for the Senate. But Coley Blease knew some things about the South Carolina voters and damned Mr. Byrnes up country as a Catholic "altar boy" and in the low country as a renegade to his faith.

So Mr. Byrnes went back to the law for six years, then made it to the Senate in 1930. Once again, he won the confidence of the establishment, of Pat Harrison from Mississippi, of Joe Robinson from Arkansas. Mr. Byrnes worked hard at the Senate's business, so the new Democratic President, the former assistant secretary of the Navy, turned to him to round up the votes.

By 1937, he was turning against President Roosevelt. He didn't like the Court-packing bill; he wanted to outlaw sitdown strikes; he couldn't see why the Federal Government should put a floor under wages and a ceiling over hours.

With war in Europe, he was back on the reservation. He was pushing the money bills to rearm, lifting the ban against the sale of weapons to belligerents, helping sell weapons to allies on long credit terms.

President Roosevelt gave him a seat on the Supreme Court in 1941, but that was too quiet a life for an activist politician, even one who still counseled the President from his chambers.

A year later, Roosevelt took him off the Court and put him in charge of holding the dike against wartime inflation. First he was director of economic stabilization, but there were too many other agencies with a finger in the economic pie. So, his authority was enlarged and he was made head of the War Mobilization Board, the "assistant President," looking after production, procurement, manpower mobilization, just about everything except diplomatic and military affairs.

He almost became President. Powerful Democrats wanted him on the ticket in 1944 to replace Henry Wallace, about whom doubts had arisen. But the CIO would have none of Mr. Byrnes and neither would some of the city bosses who feared his apostacy would hurt with Catholics.

So Harry Truman was chosen, and almost the day he took office as President, he asked Mr. Byrnes to be his Secretary of State.

"The State Department fiddles while Byrnes roams," the tag ran—he was out of the country so much. At Potsdam, at Paris at first, he was "patient and firm" with Molotov, then it was just "firm." At Stuttgart, in September, 1945, Mr. Byrnes made what was probably the first announcement of the new American policy in Europe, one based on a revived Germany. He didn't say, but some must have guessed, that this new Germany was to be the outer bastion in Center Europe against the Communists.

Henry Wallace, then Secretary of Commerce, publicly denounced the Administration's new, "get-tough-with-Russia" line. Mr. Byrnes gave Truman the choice, Henry or Jimmy, and Wallace was fired to lead his Gideon's Army to disaster in the 1948 campaign.

Mr. Byrnes was now souring on his old Senate friends, too, but from another point on the political spectrum. He resigned in 1947 and went back to South Carolina to denounce the "welfare state."

"You get drunk on power," he told his people, "you never get over it. The power to spend $47 billion is a terrible power. I doubt if God ever made any man with enough wisdom or virtue to sit in Washington and be given the power to spend $47 billion."

He ran for governor of his state at 71, perhaps with the idea of remaking the Democratic Party in the image of himself and his friends. In the Palmetto State, that was perfectly all right and he crushed three cruder competitors.

He promised to tame the Klan and got an antimask law through his legislature. He promised to keep the schools separate, but equal, and got more funds for Negro schools.

SHOCKED AT COURT DECISION

The Republicans picked Gen. Dwight D. Eisenhower so Mr. Byrnes felt no need to turn his attention to the "statist" Democratic Party. He was shocked at the Supreme Court's decision that separate was not equal and was still complaining about it on his 85th birthday.

He left the governor's mansion after one term and lived quietly with his wife, appearing in the public prints only at election time to announce his support for the Republican running that year.

He thought the people of the South "black and white, have made great progress." But whether the two races will ever integrate completely "is something I would not want to make a statement about," he said. "I do not believe in it.'

After his retirement from public office in 1955, Mr. Byrnes continued to make his name heard in politics. But as the Democratic Party continued to become more liberal, he diverted.

BACKED BYRD IN 1956

He had backed the late Harry Byrd Sr. of Virginia as a Democratic Party candidate for president in 1956, but Mr. Byrd didn't make it and that was the end of Mr. Byrnes' backing of Democratic presidential candidates.

In 1964, Mr. Byrnes was a key Southern backer of Sen. Barry Goldwater, a Republican candidate for the office of chief executive. And, in 1968, he told President Richard M. Nixon that he hoped Mr. Nixon would win.

In his later years, Mr. Byrnes said he was proudest of his war mobilization service. He boasted of the accomplishments of a South Carolina boy for whom he had gained a West Point appointment, Gen. William C. Westmoreland.

In declining health recently, Mr. Byrnes had been confined for the most part to his home. He had been sheduled, however, to attend a public ceremony May 2 to unveil a statue of himself on the grounds of the state house in Columbia.

[From the Evening Star, April 10, 1972]

JAMES F. BYRNES, POLITICAL LEADER, DIES AT 92

(By William Delaney)

COLUMBIA, S.C.—James F. Byrnes, who quite school at the age of 14 to help support his widowed mother and later became a congressman, a U.S. Supreme Court justice, U.S. Secretary of State, and governor of South Carolina, died yesterday after a long illness.

Byrnes, who reportedly had been in a coma for the past few days, died at his home here. He was 92.

His body will lie in state in the rotunda of the Statehouse tomorrow and Wednesday. The funeral will be Wednesday at Trinity Episcopal Church.

President Nixon, describing Byrnes as "a great patriot who always put his country ahead of his party," ordered the flag flown at half staff on all federal buildings and U.S. naval vessels until Byrnes is buried.

James Francis Byrnes once defined his basic needs as "two tailor-made suits a year, three meals a day and a reasonable amount of good liquor."

But the wiry little Irishman from South Carolina needed one thing more—the discordant sounds of the political arena, sounds which he orchestrated quietly and with considerable skill.

It was this need that drove Byrnes from the ownership of a small-town newspaper

into a public-office career spanning 47 years and reaching to the very pinnacle of American power in all three branches of government.

His top-level branch-swinging between 1941 and 1945—from the Senate to the Supreme Court to the White House directorate, and finally to the top Cabinet post under Harry S. Truman—was based largely on his ability to legislate the "New Deal" programs of a World War I era friend, Franklin D. Roosevelt.

MISSED NO. 2 SPOT

So high was Roosevelt's regard for Byrnes' political horse-trading skill that he made him "Assistant President" during the World War II mobilization effort, and toyed with selecting him for the fateful No. 2 spot on the 1944 re-election ticket.

But he didn't.

Truman, keenly aware of Byrnes' deep disappointment over the 1944 decision, felt obliged a year later to appoint the self-trained lawyer to one of the greatest horse-trading tasks the nation ever faced.

As Secretary of State from July 3, 1945, to Jan. 10, 1947, Byrnes accompanied the new President to the Potsdam conference and represented the nation at numerous other postwar negotiations. After the 1944 election, he had accompanied FDR to the Yalta conference, at Roosevelt's request.

Six months after he joined the Truman administration, however, Byrnes was privately accused of "babying the Soviets" by none other than his new boss—or so Truman said in later years.

CRITICIZES TRUMAN

The bitter conflict between the President and the almost-president did not surface publicly until 1949 when Byrnes, who had retired, made a speech in which he criticized Truman's domestic program as "the road to ruin."

Though Byrnes had played a major role on Capitol Hill, enacting Roosevelt's "New Deal" as an antidote to the Depression, his 1949 speech marked a turning point in his political stance.

The longtime Democrat's increasingly outspoken conservative views won wide approval in his home state, which elected him governor in 1950 with a record 85 percent plurality.

Fed up with "Trumanism," he endorsed Republican Dwight D. Eisenhower for president in 1952, and was pleasantly surprised that almost a majority of the voters in that previously "safe" Democratic state agreed with him.

Never again did he support the national Democratic ticket, endorsing Nixon in 1960 and 1968, and Goldwater in 1964.

President Nixon, who stopped by Byrnes' Columbia, S.C., home in May 1969 to congratulate him on his 90th birthday and 63rd wedding anniversary, summed up the Byrnes story this way:

"Never in American history has one man held more high offices with more distinction than has Gov. Byrnes."

Nixon and the other guests in the unpretentious white brick home then sang "Happy Birthday" to "Jimmy" as the ailing, old man managed a big smile.

The Byrnes story, which rivals the Horatio Alger legend, began amid the magnolias and wharfs of Charleston on May 2, 1879.

His mother, widowed just before his birth, took up dressmaking to support him, his elder sister, and their invalid grandmother. A widowed sister and her son, Frank Hogan (later to become president of the American Bar Association), shared Mrs. Byrnes' home.

LEFT SCHOOL AT 14

At 14, young Jim left school and became a legal firm's office boy to help support his family.

One of the members of the firm, Judge Benjamin J. Rutledge, obtained a card for him in the Charleston Library, guided his interest in law and in court stenography, and, as the youth entered his 20s, allowed Byrnes to accompany him on circuit-riding trips through the state. Byrnes passed the bar examination in 1903.

For the next four years he tried his hand at editing a weekly newspaper in Aiken, S.C., which he bought with $500 in cash and $4,500 in borrowed funds.

Newly married to the former Maude Busch—they were to remain childless—he made his first bid for office in 1908, winning the post of prosecutor for the state's Second Judicial Circuit. In this post, he won distinction of sorts by persuading juries to regard assaults on Negroes as crimes and to accept testimony from Negroes, both actions unprecedented in South Carolina.

In 1911 Byrnes came to Washington as a congressman, elected by a 57-vote margin.

During his seven terms in the House he served on a House Appropriations subcommittee during World War I, where military budget discussions brought him in contact with the assistant secretary of the Navy, Franklin D. Roosevelt. They became fast friends.

LOSES SENATE RACE

But Byrnes' role in an investigation into the Morgan financial empire, and his sponsorship of such bills as one providing the first federal aid to highways were not much help when he tackled former Gov. Cole L. Blease for a Senate seat in 1924. Neither did his status as a Catholic who forsook the Church for his wife's Episcopal faith. He lost by 2,200 votes.

He returned to Spartanburg, S.C., to practice law and prepare for his relatively easy 1930 victory over the demagogic Blease.

Back in Washington as a senator, Byrnes' power was soon on the rise after his aristocratic New York friend entered the White House.

Though an unofficial member of the New Deal "brain trust," the slight, authoritative Southerner had by 1936 moved over to the Senate "moderates," opposing increased relief appropriations, sit-down strikes, the Roosevelt congressional "purge" of 1938, and the wages and hours law. He also opposed an anti-lynching bill.

STEERED FDR PROGRAMS

His disenchantment with some of the New Deal measures, however, never led him to an open break with the President.

As Democratic whip, he loyally steered Roosevelt's programs through the Senate and, after 1939, supported with vigor such preparedness programs as Lend-Lease.

Rarely did he make a speech or show the slightest yen for publicity. ("I only went to two cocktail parties all the time I was in Washington," he said later, "and I didn't hear anything worth remembering.")

His arena was the cloakroom, and his weapons were personal charm and a blunt, tit-for-tat honesty that Republicans trusted.

His reward for producing votes came in June, 1941, when Roosevelt named him to a Supreme Court vacancy.

Byrnes' Senate colleagues endorsed him unanimously without even sending the nomination to committee.

In the ensuing 14 months, he wrote decisions limiting the right to strike abroad ships, nullifying a California anti-migrant statute, exempting a New York Teamsters' strike from provisions of the anti-racketeering law, and easing the repayment conditions of Georgia sharecropper loans.

FELT UNEASY

But Byrnes was reported to have felt somewhat uneasy in the solitude of his new post.

With the nation at war, the action he thrived on was now beyond the Court and the Capitol, at the other end of Pennsylvania Avenue, where "Jimmy" and his penchant for quiet, detailed administration were fondly remembered.

In October 1942, Roosevelt asked Byrnes to take leave from his lifetime post and head the powerful new Economic Stabilization Board, battling inflation through wage and price controls.

Byrnes immediately scrawled out his resignation, said it was permanent, and moved into an office in the East Wing of the White House.

Seven months later, Byrnes was named to head the new Office of War Mobilization. As such, he was invested with powers greater than any other American except for the President.

He was, as the press and even FDR called him, the "Assistant President" in charge of the home front, coordinating the production, procurement, distribution and transportation of all military and civilian goods.

Then, in the summer of 1944, he suffered his greatest political blow.

According to his later accounts, Byrnes said Roosevelt had led him to believe he was the White House choice to succeed Vice President Henry Wallace, who was being unceremoniously dumped from the 1944 ticket.

But the nod went to Truman, who did not appear to be seeking the nomination, and had even reportedly offered to make a speech nominating Byrnes at the convention.

Byrnes stoically concealed his hurt pride and later said he never blamed Roosevelt, only the party's big city power brokers, like New York's Ed Flynn.

Even though the President added the task of post-war planning to Byrnes' duties, and took him to the Yalta Conference, where his court stenography came in handy, the 65-year-old "Assistant President" had had enough.

In cordial circumstances two weeks before FDR's death, he resigned to return to South Carolina's lazy, fish-filled rivers, to sip bourbon and branch with friends, to practice law, to write. . . .

Suddenly Truman—not Byrnes—was thrust into the presidency, and the summons from Washington came.

Byrnes was now off to Potsdam with Truman, planning for the Japanese surrender.

The next month he led the U.S. delegation to the four-power London conference, the first in a long series in which details of the Allied peace plans were hammered out. There were also the initial United Nations meeting.

Byrnes' policy of "patience and firmness" toward the Soviets began to lean more in the direction of firmness in early 1946.

This was just after Byrnes returned from the Moscow Conference to hear Truman read him the "riot act" letter, published with Truman's blessing in 1952.

REPRIMANDED BY TRUMAN

In it, Truman reprimanded Byrnes for not communicating with him from Moscow, and expressed displeasure wtih negotiations there toward recognition of Soviet-dominated Rumania and Bulgaria. Truman also indicated he felt Byrnes had not dealt adequately with Russia's designs in Iran.

Byrnes in later years denied any knowledge of the "Dear Jim" letter and maintained he would have immediately resigned had he known of it.

Rumors of bitterness between him and Truman persisted, however, despite their outward pleasantness.

GIVES ULTIMATUM

Henry Wallace, who had been appeased after 1944 with the post of Commerce secretary, was fired by Truman after the criticized Byrnes for being too tough with the Russians at Paris. (Byrnes later said he had given Truman a "Wallace-or-me" ultimatum.)

Back in private life again, Byrnes briefly worked for the Washington law firm of Hogan & Hartson, and served as general counsel for the Association of Motion Picture Producers.

He stayed aloof from the 1948 presidential campaign, but after his turning-point speech in 1949, began criticizing Truman programs in almost every field except foreign policy. (Truman wrote Brynes: "Since your Washington & Lee speech, I know how Caesar felt when he said, 'Et tu, Brute.' ").

Byrnes, who replied "I am no Brutus . . . You are no Caesar," said Truman then began consistently making "absolutely untrue" statements to discredit Byrnes' work as secretary of State.

BACKS SEGREGATION

During his four-year term as South Carolina governor, Byrnes attempted to carry out a campaign pledge to maintain racial segregation through a $66-million program to "equalize" Negro schools. The Supreme Court's integration decision in 1954 "shocked" him.

His support for Eisenhower was rewarded with a 1953 appointment as a delegate to the U.N. General Assembly.

When he left the Governor's Mansion in 1955 at the age of 75, the "elder statesman" at last got to do some fishing, usually accompanied by his wife and their chauffeur, Willie Byrd.

He also completed an autobiography, "All in a Lifetime"—he had published "Speaking Frankly" in 1947—and used the proceeds to start college scholarships for orphans of both races.

Without children or grandchildren, he called this work "the most rewarding thing I ever did in my life."

Mr. MANSFIELD. Mr. President, will the distinguished Senator from South Carolina yield?

Mr. THURMOND. I would be very pleased to yield to the dinstiguished majority leader.

Mr. MANSFIELD. Mr. President, I wish to join in the remarks just made by the distinguished senior Senator from South Carolina at the passing of an old friend, a former Senator, a former Justice of the U.S. Supreme Court, and "Assistant President" during the course of World War II, a man of many accomplishments, in addition to being Governor of his State, who has passed on to his reward.

Anyone who knew Governor Byrnes knew him as a man of integrity, patriotism, and deep understanding.

Those of us who had the pleasure and the privilege of knowing him will miss him, and miss his greatly.

Mr. THURMOND. I wish to thank the distinguished majority leader for those kind words about Governor Byrnes.

Mr. SCOTT. Mr. President, James F. Byrnes was an American's American. His distinguished career spanned five decades, it was capped off by unselfish service to the United Nations, and subsequently to his fellow men throughout the world. Historians have placed the great accomplishments of James F. Byrnes high on their list of those who have labored to insure a world of peace.

America and the free world will share the memory of James F. Byrnes and his outstanding accomplishments. We all are in his debt. Our sympathies are extended to his family.

TRANSACTION OF ROUTINE MORNING BUSINESS

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

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 12 O'CLOCK NOON

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess until 12 noon.

There being no objection, at 11:30 a.m. the Senate took a recess until 12 noon; whereupon, the Senate reassembled when called to order by the Acting President pro tempore (Mr. GAMBRELL).

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT UNTIL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 12 noon tomorrow.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND LAYING BEFORE THE SENATE OF THE UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, after the recognition of the two leaders under the standing order tomorrow, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes; at the conclusion of which, the Chair lay before the Senate the unfinished business.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON FACILITIES PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE ARMY NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting, pursuant to law, a report on facilities projects proposed to be undertaken for the Army National Guard (with an accompanying report); to the Committee on Armed Services.

REPORT OF THE DIRECTOR OF SELECTIVE SERVICE

A letter from the Director, Selective Service System, transmitting, pursuant to law, his report, for the 6-month period ended December 31, 1971 (with an accompanying report); to the Committee on Armed Services.

PROPOSED AMENDMENT OF FISHERMEN'S PROTECTIVE ACT OF 1967

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to amend section 7 of the Fishermen's Protective Act of 1967 (with accompanying papers); to the Committee on Commerce.

PROPOSED AMENDMENT OF PUBLIC HEALTH SERVICE ACT

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Public Health Service Act to increase the fiscal year 1973 authorizations for project grants for health services development and for project grants and contracts for family planning services (with an accompanying paper); to the Committee on Labor and Public Welfare.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A concurrent resolution of the Legislature of the State of New Hampshire; to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION No. 1

"Ratifying the proposed amendment to the Constitution of the United States extending equal rights to women

"Whereas, the Ninety-second Congress of the United States of America at its Second Session, in both houses, by a constitutional majority of two-thirds thereof, has made the following proposition to amend the Constitution of the United States in the following words, to wit:

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislature of three-fourths of the several States within seven years from the date of its submission by the Congress:

" 'ARTICLE

" 'SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

" 'SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this Article.

" 'SEC. 3. This amendment shall take effect two years after the date of ratification.'

"Be it resolved by the House of Representatives of the General Court of the State of New Hampshire, the Senate concurring:

"That, the proposed amendment to the Constitution of the United States extending

equal rights to women be and the same is hereby ratified; and

"Be it further resolved,

"That certified copies of this resolution, signed by the Speaker of the House and the President of the Senate, be by them forwarded to the President of the United States, the President Pro Tempore of the Senate of the United States, the Speaker of the House of Representatives of the United States and the Administrator of General Services of the United States.

"Passed March 23, 1972."

A joint resolution of the Legislature of the State of California; to the Committee on Public Works:

"ASSEMBLY JOINT RESOLUTION No. 12

"Relative to Federal maintenance dredging of small craft harbors

"Whereas, The State of California has an active program for harbors of refuge and assistance to local entities for the construction of small craft harbors; and

"Whereas, The state also has a vital interest in the preservation of these harbors upon their completion and continual operation; and

"Whereas, The federal government, through the Corps of Engineers, plays a vital role in maintaining these harbor entrances and navigable waterways; and

"Whereas, These dredging projects funded by the federal government are of paramount importance in the continuation of the financial feasibility of maintaining small craft harbors in the State of California; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to continue to provide funds for maintenance dredging of small craft harbor entrances and navigable waterways in the State of California; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

Resolutions of the Commonwealth of Massachusetts; ordered to lie on the table:

"RESOLUTIONS ON THE UNEMPLOYMENT CRISIS IN THE COMMONWEALTH

"Whereas, There is an unemployment crisis in this Commonwealth; and

"Whereas, There is grave danger of the consequences that might follow if work is not provided; and

"Whereas, There is presently over 200,000 people unemployed in these stricken areas; and

"Whereas, The Congress of the United States must provide federal aid to help those caught in these stricken depressed areas; now, therefore, be it

"Resolved, That the members of the Congress of the United States from the Commonwealth and the Legislative and Executive leaders of the state make arrangements to communicate and hold meetings with each other in an attempt to alleviate and eventually remove the critical unemployment situation which now exists in this Commonwealth; and be it further

"Resolved, That the President of the United States prepare a special message to the United States Congress to enact such legislation for a period sufficient to enable the federal government to develop effective alternative methods of aiding the stricken depressed areas which would stimulate business and the economy by providing government work; and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States, to the Secretary of Commerce, to the presiding officers to each branch of Congress and to the members thereof from the Commonwealth of Massachusetts.

"Senate adopted, April 3, 1972."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENSON, from the Committee on the District of Columbia, without amendment:

S. 1338. A bill to authorize the government of the District of Columbia to fix certain fees (Rept. No. 92–739).

By Mr. STEVENSON, from the Committee on the District of Columbia, with an amendment:

S. 1363. A bill to revise and modernize procedures relating to licensing by the District of Columbia of persons engaged in certain occupations, professions, businesses, trades, and callings, and for other purposes (Rept. No. 92–740).

By Mr. STEVENSON, from the Committee on the District of Columbia, with amendments:

S. 2209. A bill relating to crime and law enforcement in the District of Columbia (Rept. No. 92–741).

By Mr. RANDOLPH, from the Committee on Labor and Public Welfare, with amendments:

H.R. 9212. An act to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes (Rept. No. 92–743).

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

S.J. Res. 208. A joint resolution authorizing the President to proclaim the first Sunday in June of each year as "National Shut-in Day" (Rept. No. 92–742).

Mr. HRUSKA. Mr. President, this joint resolution was introduced by the distinguished Senator from West Virginia (ROBERT C. BYRD). It is upon the testimony of the Senator from West Virginia, and the data he provided the committee, that this favorable report is based.

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. GRIFFIN:

S. 3465. A bill for the relief of Jack Bradshaw, Jr. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 3466. A bill to establish the Lone Peak Wilderness Area in the State of Utah; and

S. 3467. A bill to authorize the Secretary of the Interior to convey certain property to John S. Boyden, of Salt Lake City and County, Utah. Referred to the Committee on Interior and Insular Affairs.

By Mr. HATFIELD:

S. 3468. A bill to increase the rate of duty on shelled filberts imported into the United States. Referred to the Committee on Finance.

By Mr. TAFT:

S. 3469. A bill to amend title 5, United States Code, to provide for withholding city income taxes from compensation paid Federal employees. Referred to the Committee on Finance.

By Mr. HRUSKA (by request):

S. 3470. A bill to remove the limitation on payments for consultant services in the Community Relations Service. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOSS:

S. 3466. A bill to establish the Lone Peak Wilderness Area in the State of Utah. Referred to the Committee on Interior and Insular Affairs.

LONE PEAK WILDERNESS

Mr. MOSS. Mr. President, I am today introducing a bill to designate 13,000 totally undeveloped and roadless areas in the Wasatch and Uinta National Forests within a few minutes drive of Salt Lake City as the Lone Peak Wilderness Area.

I am acting at the request of the Salt Lake County Commission which on March 13, approved the "concept" of establishing this wilderness area.

The boundary proposed in my bill generally would include the land surrounding Lone Peak southeast of Salt Lake City in the Wasatch range. The line would run along the south slope of Little Cottonwood Canyon and continue southward to the slopes draining into the Dry Creek. It is a beautiful wild area and is adjacent to the heavily populated towns and cities of the Wasatch Front where 70 percent of Utah's population resides. It is so close to city dwellers that it is within reach of everyone seeking a wilderness experience.

There is considerable interest in Utah in the establishment of the Lone Peak Wilderness Area. Some conservation groups in the State want a much larger area set aside. My purpose in introducing the bill is to have a vehicle for hearings in Salt Lake City where various interests can be heard and all aspects of the proposal examined carefully.

I understand that there are no working mines in the area, but there are some abandoned shafts. Mining interests in the State must have an opportunity to be heard, as well as all other groups with views to express.

The land involved is all public land—no private lands are involved.

By Mr. TAFT:

S. 3469. A bill to amend title 5, United States Code, to provide for withholding city income taxes from compensation paid Federal employees. Referred to the Committee on Finance.

Mr. TAFT. Mr. President, today I am introducing legislation which would require the Federal Government to withhold city income taxes from its employees. This legislation would benefit directly hundreds of thousands of Federal workers.

Because local income taxes are not withheld from the wages of Federal employees, these workers are forced to pay the taxes in lump sums on a quarterly or annual basis. The obligation to pay a substantial amount in local taxes at one time presents a serious hardship to many Federal workers. One third of Cleveland's postal workers have not been able to meet this obligation, and now owe the

city hundreds of dollars per person in back taxes.

This legislation would allow Federal workers to pay their city taxes in the same convenient manner as other workers, by making the payments in even installments throughout the year.

The legislation would also provide some extra money for the cities. Because the cities' tax collection departments will no longer have to devote extra attention to Federal workers, administrative costs will decrease. In my own State of Ohio, the cities of Akron, Columbus, and Toledo expect that they could each save $20,000 to $35,000 in this manner. The major new source of income, however, would occur as a result of a reduction in tax delinquencies and an increase in the cities' ability to collect delinquent taxes. Cleveland's tax department estimates that because of fewer losses in uncollected taxes, the city's income could be increased by $300,000 to $400,000. The city of Cincinnati expects the enactment of this bill to save its taxpayers about $100,000. Similar savings would be realized by cities in other States.

The measure would apply to cities which have 200 or more Federal employees. In addition, the Secretary of the Treasury would have the discretion to apply it to other cities where he feels that its potential benefits outweigh the expenses to be incurred by the Federal Government.

By Mr. HRUSKA (by request):

S. 3470. A bill to remove the limitation on payments for consultant services in the Community Relations Service. Referred to the Committee on the Judiciary.

Mr. HRUSKA. Mr. President, I send to the desk a bill to remove the limitation on payments for consultant services by the Community Relations Service of the Department of Justice. I introduce the bill at the request of the Acting Attorney General and ask unanimous consent that the text of the bill and of Mr. Kleindienst's transmittal letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibits 1 and 2.)

Mr. HRUSKA. Mr. President, this is a simple proposal which would insure that consultants for the Community Relations Service are treated equally with those hired by other Federal agencies. The Civil Rights Act of 1964 specifically provides (42 U.S.C. 2000g) that consultants for the Service be limited to a per diem of $74.11, which was the rate prevailing at the time of the adoption of the act. Since 1964 the rate has increased to $127.92 and most agencies have authority to pay this figure. The bill submitted by the Department of Justice would delete the specific figure now applicable to the Community Relations Service with the result that the general statute (5 U.S.C. 3109) would become operative thus bringing the Service into parity with other agencies.

It is my hope that this bill can be promptly considered and approved so that the competitive disadvantage suffered by the Community Relations Service in seeking consultants can be ended.

I send the bill to the desk and ask that it be appropriately referred.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred.

EXHIBIT 1

S. 3470

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 1001(a) of the Civil Rights Act of 1964, 78 Stat. 267, 42 U.S.C. 2000g, is deleted.

EXHIBIT 2

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 29, 1972.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal to remove the limitation on payments for consultant services in the Community Relations Service.

The Civil Rights Act of 1964 established the Community Relations Service to provide assistance to communities in resolving disputes, disagreements, or difficulties relating to racial discrimination. At that time the Congress placed a $75.00 per diem limitation on the Commission's authority to pay experts and consultants.

When this legislation was being considered by the Congress most executive agencies were limited to $74.11 per diem for these services. Today, most are authorized to pay $127.92 per diem. The result is that the Community Relations Service is at a competitive disadvantage when seeking the assistance of highly qualified people. This was clearly not the intent of Congress since the limitation was set at a level comparable to other agencies.

This legislative proposal would delete the limitation provision with the effect of authorizing the Service to pay per diem rates not in excess of the maximum authorized by section 3109 of title 5, United States Code, presently $127.92.

Since our continued effectiveness in this important area of concern will be jeopardized unless adequate professional resources are available, we urge the early enactment of this measure.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Acting Attorney General.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 3199

At the request of Mr. HATFIELD, the Senator from Michigan (Mr. GRIFFIN) was added as a cosponsor of S. 3199, a bill to provide for the conservation, protection and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

S. 3351

At the request of Mr. BROCK, the Senator from Tennessee (Mr. BAKER) and the Senator from Pennsylvania (Mr. SCHWEIKER) were added as cosponsors of S. 3351, a bill to the establish a Council on International Economy Policy.

S. 3380

At the request of Mr. Moss, the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. MONDALE), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 3380, a bill to permit immediate retirement of certain Federal employees.

WAR POWERS ACT—AMENDMENTS

AMENDMENTS NOS. 1109 THROUGH 1114

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

Mr. DOMINICK submitted six amendments intended to be proposed by him to 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.

SOCIAL SECURITY AMENDMENTS OF 1972—AMENDMENT

AMENDMENT NO. 1115

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

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

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 914

At the request of Mr. HATFIELD, the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Illinois (Mr. STEVENSON), and the Senator from Idaho (Mr. CHURCH) were added as cosponsors of amendment No. 914, intended to be proposed to the bill (S. 3108), to authorize appropriations during the fiscal year 1973 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

ADDITIONAL STATEMENTS

ANNUAL BEWILDERMENT OF THE INCOME TAX

Mr. TAFT. Mr. President, with the approach of April 17, millions of Amer-

icans once again face the annual bewilderment of the income tax. The extent to which even relatively simple tax problems can confuse and confound the average American, and indeed even tax experts, was recently illustrated by an article entitled "Need Help on Your Income Tax?" written by John Fialka, and published in the Washington Sunday Star of April 9, 1972.

The Sunday Star created a fictitious taxpayer with a relatively simple tax situation and had tax returns prepared by seven Washington area income tax services. Incredible as it may seem, each of these tax services reached a different result. Even more distressing is the fact that three offices of the Internal Revenue Service reached different results with this same tax situation.

I believe that this amply demonstrates the need to simplify and clarify our income tax laws and regulations. When tax consultants and the Internal Revenue Service are confused and bewildered by a simple tax problem, the plight of the average taxpayer attempting to do his own return is made evident.

I would hope that Congress can address itself to the problem of streamlining and simplifying our tax laws so that the average American will not be so confused. Our tax system should be a source of revenue and not a test of legal and mathematical gymnastics.

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

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

NEED HELP ON YOUR INCOME TAX?

(By John Fialka)

A fictitious resident of the Washington area, usually using the name "Median R. Fairfax," had his federal income tax returns prepared by seven different "tax experts" this year.

None of them got it quite right.

For a fee, ranging from $15 to $39.50, he obtained returns calling for refunds from $570 to $801.

His tax problem, which was stated exactly the same way in each case, was concocted as part of a study by The Star of the area's booming tax preparation industry.

In every case, according to an IRS accountant who checked the problem, the hired preparers made errors running in both directions, allowing prohibited deductions and ignoring legitimate ones.

Allowable charitable deductions ranged from a low of $92 to a high of $729.

Allowable expenses for an office in the taxpayer's home were estimated between $109 and $716.

In three cases, tax preparers, struggling to provide the customer with a "good refund," actually exposed between $250 and $350 worth of additional, exempt income to taxes by failing to handle stock dividends properly.

Median R. Fairfax was created to fall somewhere in the middle of the estimated 500,000 area residents who file federal income tax returns.

His total income and even his name were inspired by a recent study which placed the median family income in Fairfax County at $15,933.

Like many area residents, Fairfax was able to itemize his deductions, primarily because he had just purchased a $32,000 home and paid $1,842 in interest charges last year on his mortgage.

He had a wife and one child. Included in the family income was $750 earned by his wife last year, working in an office at home as a free-lance writer.

Outside of his salary, $14,683, earned working as a writer for an obscure trade publication firm, Fairfax's only remaining income consisted of $500 worth of dividends from two blocks of stock owned by him and his wife.

Like many taxpayers, Fairfax was plagued with expenses, many of which he hoped to deduct from his taxes. Included in a fact sheet given to each tax preparer were a dozen items culled from a list of nondeductible expenses found in a $1.95 tax guide for laymen purchased at a news stand.

They ranged from a desire to deduct a diaper service as a medical expense to a hope that a $213 contribution to the Committee on Political Education, (COPE) the political arm of the AFL–CIO, could be taken as a charitable contribution.

There were two other factors: Fairfax wanted to find some way to write off expenses involved in his wife's office. He also pointed out that $250 worth of his dividends were issued in common stock, a fact that would tell a tax expert that they were not taxable.

Fairfax's tax problem was taken to seven different tax preparation firms, ranging from the largest to among the smallest in the area. In each case a reporter, posing as a friend of the taxpayer, gave them the fact sheet. (Matters, such as how to depreciate a house, over which tax experts might legitimately differ, were stipulated at an exact figure and method previously used if such questions arose.)

The majorty of tax experts consulted said at the outset that the problem was "fairly simple."

John Morrison, an employe of Liberty Loan Corporation's Lee Highway office in Arlington, glanced down the list and said there would be "no problem."

"We'll have this for you in a couple of days. It's all done by computers in New York," he told the customer.

A couple of days later, Morrison called the customer and said he had some doubts about several of the items on the list. "You're the expert," he was told.

"Listen," he replied. "There are no experts in this business. You just look at what's down there and then you take your best shot."

Later the same day, Morrison called again and said Liberty was unable to prepare the return properly and offered the customer his money back. "We decided the computer would just screw it up," he said.

At the Beneficial Finance Company's Rockville office, a woman took the fact sheet and a check for $15 and indicated that Beneficial, which also prepares tax returns by machine, would have the returns shortly.

Later, an office manager called the customer. There were several questions, he said, that would require the customer to return to the office and would necessitate raising the fee to $30.

The customer refused and, after an exchange of calls during which Beneficial reached the newsroom operator of The Star, the company suddenly agreed to prepare the return for $15 and to have Perry M. Stufflebeam, an accountant, do the job by hand.

"Frankly, this looks like some kind of a ringer," Stufflebeam said at one point.

Stufflebeam correctly cut the taxable dividend income to $50 by taking out the $250 in common stock and inquiring whether the stocks were held jointly. They were, so he applied the $200 exclusion of the husband and wife to the remaining $250.

In the area of charitable contributions, however, Stufflebeam threw in the contribution to COPE along with donations to a neighborhood civic league, a fraternal bar association and a church in Brazil, all of which according to the tax guide and the IRS, are forbidden.

He did weed out several other prohibited items, including the diaper service and a deduction for snow tires, which the customer insisted were needed to get to and from work.

Combining the thumping $565 worth of charitable contributions with a total of $613 worth of expenses connected with the home office, Stufflebeam produced a refund of $721.

"Snow tires, that's cute," said Joe Berube, an income tax preparer in H&R Block's Washington Avenue office in Arlington.

In a somewhat grueling, hour-long interview, he crossed out several items on Fairfax's list. "Snow tires, I can't get over that," he repeated several times.

He was especially hard on the charitable contributions, paring the list down to an allowable $52 contribution to a McLean church and a non-allowable item for raffle tickets from a church automobile drawing.

At first, Berube was reluctant to declare the expenses involved in Mrs. Fairfax's office. "That's just peanuts," he said, looking over household expenses.

He made a stab at it, at the urging of the customer, and seemed pleased with a total of $572 worth of expenses that he had calculated. The total included one nonallowable item, a charge for a sewer hookup fee, which Berube entered next to "repairs and maintenance" on the special, H&R Block form.

Finally, he came up with a $627 refund, but seemed apologetic about cutting out so many items from the fact sheet.

"Well, you're the expert," the customer said.

"There are no experts in the tax business," said Berube.

Mrs. A. Jackson, the preparer who greeted the customer at H&R Block's office at 1601 Rhode Island Ave. NE., was able to come up with only $218 worth of office expenses.

She also put down $400 of the $500 dividend income as taxable income. She worked hard on the contributions, however, quickly striking out the snow tires ("They'll never allow that"), the diaper service and the contribution to COPE.

When she finished, the only nonallowable item remaining was the contribution to a Brazilian church, which she listed as "church (Peru)." Her refund was the lowest of the seven, $570.

Rarely did any of the seven tax preparers who agreed to take on the problem look up a question in a tax guide or a reference book.

For instance, Mrs. Lucille Smith, a preparer for "Pro-Tax," or the Professional Tax Service, labors over her forms in a sparsely furnished storefront on Arlington's Washington Boulevard.

Her customer, noting the absence of bookshelves, or, for that matter, books, asked: "Don't you have any books to look things up in?"

"Well," she replied, "to be truthful, I usually don't use any. Over the years, you know, you sort of begin to feel what's right."

"Pro-Tax" has a sign in its window that says "$5 and Up." "Up," in the case of Median R. Fairfax, amounted to a fee of $49.50. Mrs. Smith, however, after checking with her home office, agreed to subtract $10 from the bill because Mrs. Fairfax's office expenses were easy to handle.

Her instinct, however, failed her when it came to the dividends. Again, Fairfax had to pay taxes on $400 worth of the $500. She also failed to put down two other legitimate deductions, $78 worth of interest on an installment loan, and a $75 payment to a medical clinic.

She worked up a total of $518 worth of office expenses, including the sewer hookup fee and $45 worth of office supplies which did not appear on Fairfax's fact sheet.

Mrs. Smith had some funny feelings, however, about some of the contributions. "This Committee on Political Education, uh, is that a recognized thing?" she asked in a telephone conversation several days after she had begun work on the return.

"I don't know," said the customer. "All I know is that it exists."

"And this raffle ticket. What is a raffle ticket?" she wanted to know.

"It's a chance on a car," she was told.

'Well, I guess that's all right. I'll abbreviate some of these things," she said.

The raffle ticket, sold by a church, was listed on her return as "St. Marys." The Brazilian church was listed as "St. Peters." She apparently had second thoughts about the donation to COPE, however, which did not appear.

"Now, about those snow tires, I know they won't go," she added.

The refund on the return prepared by "Pro-Tax" came to $586.

Perhaps the most gracious tax preparer was J. C. Willard, who works in Woodward & Lothrop's downtown store, in a little house constructed for tax preparers near the toy department.

Willard threw in almost everything, except the snow tires. Among the nonallowable items in the return prepared by Woodward & Lothrop's tax service were disability insurance premiums; diaper service charges; church raffle tickets; donations to COPE, a neighborhood civic league, a fraternal bar association and the Brazilian church; dues to a veterans' organization, and interest on a bank loan owed by a neighbor.

He handled the dividends properly, putting down only $50 worth of income, but was unable to find more than $254 in office expenses.

The completed return called for a refund of $801, the highest amount among the seven prepared returns.

Mrs. J. G. Senseman, who works for King Tax Service in Alexandria, seemed worried about some of the contributions, but she took a more creative approach to the problem.

On her return the diaper service fee was shown as "nurse and nursing" expenses. The dues to a veterans' oragnization was listed under "Disabled American Veterans." The interest on a loan owed by a friend was tagged "credit union." Several other non-allowable items may have been included in an entry marked "various $250," and the Brazilian church was listed, simply, as "St. Peters."

Non-allowable disability insurance premiums were lumped together with allowable health insurance premiums. A strange, $108.40 item, an amount not specified in the tax problem, was listed under "sales tax, major purchases."

By including a portion of the sewer hookup fee, Mrs. Senseman came up with a huge, $716 deduction for office expenses.

However, she failed to notice the fact that $250 worth of dividends were issued in common stock and missed the opportunity to exclude that amount.

When the customer arrived to pick up his completed forms, Mrs. Senseman called his attention to the $766.12 refund. "I hope your friend appreciates the work we've done for him and comes to us next year," she said.

The seventh tax preparer sampled was Robert A. Jungmann, whose office was located behind a partition in Sears' tire department in its Wilson Boulevard Store in Arlington.

Jungmann, who was moonlighting from his regular job as a statistical analyst, uses a formidable looking, solid state adding machine. He is also a former IRS collection agent and some of his old instincts came out as his fingers raced over the machine, toting up the contributions.

"Sorry there, Median old boy," he said, throwing out the COPE deduction. After consulting a $1.95 tax guide for laymen, he also threw out the Brazilian church donation.

Remaining, however, were the bar association and civic league, along with the veterans' group dues.

Jungmann managed to find only $109 worth of office expenses, but handled the dividend income well, reporting only $50. His refund was $606.

What is the right answer to Median R. Fairfax's tax problems? Leon Levine, a certified public accountant who works for the Internal Revenue Service, agreed to find out.

Every one of the 12 non-allowable items worked into Fairfax's tax sheet were thrown out. The only charitable contribution allowed was a $52 donation to a McLean church.

By carefully searching for items that could be taken as office expenses, however, including the depreciation of a portion of the house, Levine came up with $680 worth of office expenses. Dividends were treated properly, exposing only $50 to taxes.

"That is the way we want people to do it," he said, showing a $613 refund. "Work hard to figure out your legitimate deductions, you're entitled to them."

Mr. Fairfax's problem, he concluded, had been "fairly simple."

Although it has no way of estimating how much money has been drained from—or perhaps added to—government coffers by the mass production of poorly trained and, sometimes, incompetent "tax experts," the IRS has been aware of the problem for years.

This year, it has been involved in a small-scale, experimental crackdown on preparers in the southeastern region of the country.

Last month, five tax preparers from southern Virginia were indicted for filing faulty tax returns to gain unusually large refunds for their customers.

Last Thursday, the IRS announced that it has also been monitoring tax preparers in Northern California. Agents posing as clients took the same tax problem to 318 preparers.

Of these, 159 filled out returns that the IRS considered fraudulent, 20 did work that was labeled questionable and 17 handed back forms that were incomplete. The remaining 122 preparers got the right answer.

Alarmed at the fact that a major percentage of taxpayers now have their returns prepared by third parties, the IRS set out to convince taxpayers this year that at least 30 million of them were smart enough to work out their own returns.

Writing in the preface to this year's income tax mailing, IRA Commissioner Johnnie M. Walters noted that even if a preparer is hired, it is the taxpayer who must answer for any errors on his return.

There are no standards, no regulations, that govern the great majority of the nation's tax preparers—excluding accountants, attorneys and a small group of enrolled tax agents which can be regulated by professional groups or the IRS.

According to the IRS, they are not liable to the taxpayer or the government for their errors, as long as there is no proof of conspiracy to defraud.

If and when an audit occurs, unless he has received an express guarantee from his preparer, it is the taxpayer who must defend the return and pay the fines and extra taxes that may be necessary.

It would appear that those who are least protected under the present system are like Median R. Fairfax, people who are baffled by their own tax problems, but don't feel the need or want to face the expense of hiring a lawyer or an accountant.

How does one choose among the estimated 200,000 companies, persons and franchises that are now in operation in loan companies, department stores, shopping centers and storefronts as "expert" tax preparers?

The IRS dodges the question. "You should choose your income tax man with the same concern you would use in selecting a brain surgeon," said one spokesman.

There are signs that Capitol Hill is also becoming restless over the proliferation of the tax preparation industry and its impact on the nation's revenues.

On Thursday, a subcommittee of the House Government Operations Committee, headed by Rep. John S. Monagan, D-Conn., will open hearings on a bill to regulate income tax preparers.

According to Monagan, 78 million taxpayers used preparation services last year. Of these, 28.4 million were people who had incomes of less than $5,000 a year.

"Apart from the unscrupulous actions of certain return preparers and the detrimental impact that their practices have on the U.S. Treasury, the subcommittee is also concerned with the financial impact on the treasury that results from the deduction of fees paid to return preparers," Monagan stated, in announcing the hearings.

"If one assumes that the average fee is $13, the tax return preparation industry grossed more than half a billion dollars in 1970."

And Sen. Abraham A. Ribicoff, D-Conn., has suggested that the government hold tests for tax preparers and license those who pass. The testing and regulation of license holders, he believes, might help the preparation industry by giving the public more confidence in it.

Some experts, including Singleton B. Wolfe, head of the IRS's audit division, don't believe the Ribicoff idea is workable. "We are short staffed now and this business is so huge we'd never have enough manpower to police it," he said.

The size of the preparation industry in the Washington area is demonstrated by the fact that one company, H&R Block, has 80 offices here. According to Ed Morgan, a regional executive for H&R Block, it prepares one out of every five returns filed in the area.

The average return the company handles, he added, is an itemized 1040 that is accompanied with at least one of a number of special tax schedules, such as schedule C, which Fairfax needed for his home office expenses, or schedule D, required for the income for sale of property.

Morgan pointed out that Block attempts to assure the expertise of its preparers by holding its own tax courses each fall. Those interested in becoming preparers the following spring must pay $60 for the course. Block hires from those who pass.

Block also is one of the few companies which guarantees its returns, promising that an employe will accompany the taxpayer to an audit and will pay any fines involved, but not additional taxes that may be due.

According to Morgan, H&R Block returns are checked at least three times before they are delivered to the customer. "We are trying every way that we can to maintain the quality of our service," he said.

Asked about the two tax returns prepared for Median R. Fairfax, Morgan replied, simply, "That was not our best work."

THE FINAL RESULTS

Preparer	Contributions claimed	Office expenses claimed	Dividend income subjected to tax	Preparation fee (including State forms)	U.S. refund due
Internal Revenue Service	$52	$680	$50	None	$613
H. & R. Block (D.C.)	150	218	400	$17.50	570
Professional Tax Service	202	518	400	39.50	586
Sears	366	109	50	27.50	606
H. & R. Block (Va.)	92	572	50	17.50	627
Beneficial Finance	565	613	50	15.00	721
King Tax Service	516	716	300	20.00	766
Woodward & Lothrop	729	254	50	32.50	801

THE IRS GOOFED, TOO

A reporter, posing as "Median R. Fairfax," visited three of the area's walk-in information offices operated by the Internal Revenue Service. Two of the three government experts fared as badly as the private preparers.

After several people with rumpled papers and troubled faces had spoken to James D. Land, an employe standing behind a counter in the IRS downtown information office at 12th and E Streets NW, Fairfax presented him with his tax problem, which included twelve prohibited deductions in a list of income and expenses.

Land, a breezy, confident man, read through the list, checking off two items with a pencil. "Where did you get the idea you could deduct snow tires?" he asked, checking off that item and a diaper service fee included under medical expenses.

As the taxpayer studied the items he checked off, Land added reasuringly, "Don't worry, I only checked off two of them."

At the IRS office at Baileys Crossroads in Fairfax County, Harold Chusid confidently disallowed 7 of the 12 items. However, his pencil paused over a $213 contribution the taxpayer had made to the Committee on Political Education, the political arm of the AFL–CIO.

"I just don't know about this one," he said.

"Don't you have some book you could look it up in?" asked the taxpayer.

Chusid frowned, then shook his head. "You know when it gets into the political area, it's hard to tell," he said.

The third IRS expert consulted was sitting in an office in the Longworth House Office Building. It is one of two information offices the IRS maintains on Capitol Hill.

Perhaps because he is used to dealing with the people who get and eventually spend the money, a young man quickly went down the list, answering "No sir," or "Yes Sir," after each item. All twelve items were disallowed.

PROBLEMS OF OLD AGE

Mr. EAGLETON. Mr. President, Mr. Gil Murphy, of St. Louis, Mo., believes that our citizenry over age 65 comprise the most abandoned group in America. Many knowledgeable people involved with the problems of our older citizens would certainly agree with him.

What Mr. Murphy has done is to organize 207 clubs and organizations representing the elderly into a committee called OASIS, Older Adults Special Issues Society. OASIS serves as a coordinating agency and acts as a focal point through which elderly citizens can express their needs and problems.

As head of OASIS, Mr. Murphy has become an informed and vocal advocate for that portion of the 22 million elderly and often forgotten Americans who live in the St. Louis area.

As chairman of the Subcommittee on Aging, I commend to the Senate an article regarding the activities of Mr. Murphy and OASIS, published in the St. Louis Post-Dispatch of March 21, 1972.

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

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

AN OASIS IN DESERT OF OLD AGE

(By Jake McCarthy)

Gil Murphy thinks our citizenry over age 65 is the most abandoned group in America, and he wants to set up a "crisis intervention agency" to cope with the problems here of the old and lonely.

Disturbingly enough, he believes also that the problem of aging in today's conglomerate society begins much earlier than the once-traditional retirement age. It begins for many when they find themselves unemployed at age 45 to 50.

Murphy, a 45-year-old Presbyterian minister, brings a special authority to his view of the situation. He ended a 20-year stint in the pulpit in 1968 for what he calls his "tent-maker ministry" among the senior citizens of our community. Not only are the elderly ignored, he says. So are most efforts to help them.

His own efforts are channeled through Older Adults Special Issues Society, (OASIS), which grew out of early efforts to secure reduced transit fares for people over 65. But OASIS hasn't turned the desert green yet. As a matter of fact, what little green it has had, in terms of financial support, is withering and may dry up by April 1.

OASIS represents 207 elderly and retiree clubs in the St. Louis area and has an active membership of 4900 families, including 1641 families classified as low-income, and a black membership of 38 per cent.

Although OASIS serves as the co-ordinating agency for the 207 clubs and provides crisis services and a focal point through which the elderly can express their problems and needs, Murphy says "we don't have the support of the Establishment." He points out that United Fund has declined to support the Older Adults Special Issues Society for three consecutive years.

"They said our program must become self-sustaining," he says, "but the people we are trying to help have to struggle themselves just to survive."

Murphy has been operating on a grant of $16,000 under Title III of the Older American Act, plus free space amounting to the same value donated by Christ Church Cathedral downtown. But the money runs out March 31.

Ten per cent of our national population, or 22,000,000 people, are over age 65, he points out. There are about 580,000 persons over 65 in Missouri, or about 11.5 per cent. Some 17 per cent of the city's population, or 91,000 persons, fall into that category, compared to 7 per cent in St. Louis County.

The obvious long-term problem of the elderly, Murphy says, is to find adequate income. "But let's face it," he says, "they're not going to get it." Thus he sees an urgent need for a crisis intervention agency to meet their immediate problems, and is preparing applications to foundations for support.

"If older people get sick, we know how to get them into a hospital. Or get their heat or electricity turned back on, or get food into their house, and then work out a long-term plan through some long-term agency," he explains.

"We want to see if we can keep them out of institutions and in their own places of residence."

But he points out that "we have many misconceptions about the plight of the elderly. We assume that if they have paid off their home during their working years, they'll always have a place to stay. But they soon find out they can't keep up with their property taxes if their only income is social security. Then they have to sell that house or lose it."

Murphy charges that Union Electric Co. is discriminatory in its rate structure, under which the cost of electricity decreases with increased usage. "So the little old lady who burns a single 50-watt bulb in her kitchen to save money pays more per kilowatt than the family in an eight-room house that keeps the lights on all night.

"There aren't any social workers assigned to the elderly because they are on Social Security, not welfare. There isn't anybody looking in on them except, maybe, a helpful neighbor. Sometimes they're not so helpful. If the old person has to go to the hospital, he may come home and find out that what some neighbor was keeping his eye on was the old person's television set.

"If the aged person is deemed incompetent, his social security checks might be 'held' by some institution and the person never sees it. He or she doesn't even have enough money to buy a Coke or a bag of potato chips.

"And even if the older couple has a social security income as high as $300 a month, and tries to maintain a home, you've got the figure maybe $50 or goes to property taxes, another $50 or more for utilities, maybe something for a car. Then what's left for food and other necessities?

"But I would guess the average social security income is far less than that—maybe as low as $100 per month on the average. Who's kidding whom that elderly people can survive on that?"

Murphy declares: "Because we don't want to face the problem, we segregate our elderly. We tend to put them into enclaves in the city where we don't have to see them all the time. Or else we tell them they ought to move to some 'retirement village' in Florida or Arizona, if they can afford it, and they have to spend their remaining years with a bunch of strangers."

The problem is getting worse, he believes, because of what is happening to the person over 45. Part of the difficulty, he says, is the private pension system. "Many corporations have a plan in which the middle management guy comes under it after 20 years. So, suddenly, after 19 years and six months, the guy in his 40s finds his services aren't needed anymore.

"Maybe he has worked up to an income of $20,000 or $30,000 a year and he's 45 years old. He thinks he's qualified and assumes he'll connect right away, but he soon finds out that companies aren't 'hiring laterally.'

"He finally offers to work for $10,000 or $15,000, but they tell him he wouldn't be happy at it, that he's overqualified. So he has to go into sales and become like the fictional salesman Willie Loman the rest of his life. Of if he's saved some money, he might buy some franchise operation. His own business. But unless he's lucky, he loses his shirt.

In any case, by the time he's 65 he's probably flat broke. He doesn't have a pension. His reduced earnings for the last 20 years has reduced his social security payments, and he finds himself trying to survive on a pittance. He never thought it would come to this."

Murphy says a bill now before the Missouri Legislature, House Bill 1933, would give relief on property taxes to the elderly on a sliding scale, depending upon old age income, "and that would be a help if it passes. But it's relatively little help in terms of the needs of the aging."

Murphy is a consultant to St. Louis's new Office of Aging, which recently received a grant of $25,000 to plan a $200,000 program of improved social services for the aged. Murphy became active in the question of aging in 1965, when he began to take part in the Home and Family Nurture Program of the U.S. Presbyterian Church.

Born Gilbert C. Murphy in Galesburg, Ill., on May 26, 1927, he was graduated from Westminster College at Fulton in 1948 and went on to the McCormick Theological Seminary in Chicago, where he was ordained in 1951.

He held three pastorates in Kansas City, and was a community organizer there. Then he moved to Webster Groves in 1963 to become pastor of South Webster Presbyterian Church.

In 1968 he decided to "go into the tent-maker ministry" under which a minister makes his own economic way in the world. He still serves as a loaned pastor at Mizpah Presbyterian Church in Bridgeton, although his official assignment from Presbytery of

Southeast Missouri is his work with the Older Adults Special Issues Society.

He has had a number of setbacks in his three years with OASIS. Plans to utilize the Lenox Hotel for a wide range of elderly activities fell through for lack of economic support, and last August OASIS was offered quarters at Christ Church Cathedral.

In addition to a lunchtime soap program for the destitute elderly and a series of crafts and activities "to integrate the elderly into interpersonal relationships," OASIS keeps itself busy in interrelating the meetings of its 207 associated clubs and serving as a central voice. Its board of directors is made up entirely of the elderly, although there is an advisory committee of prominent citizens. "But our decisions are made by the elderly," he says.

"Most of the money allocated to meet the needs of our older citizens goes to those who are institutionalized. But only about 5 per cent of our elderly are institutions. What are we going to do about the rest?" Murphy asks. "Keep on sweeping them out of sight and out of mind?"

SOLID WASTE DISPOSAL PROBLEMS—ADDRESS BY DAVID D. DOMINICK

Mr. MOSS. Mr. President, the National Association of Secondary Materials Industries held their annual convention in March of this year. One of the important addresses given at their convention was a thoughtful address given by David D. Dominick, Assistant Administrator, Office of Categorical Programs, Environmental Protection Agency.

His comments reflect the kind of direction this country must go if it is to solve its solid waste disposal problems, and it indicates that the Environmental Protection Agency is investigating the problem and taking action in some of the needed areas. The examination of freight rate discrimination, use of user deposits, taxes on certain items, technological invocations, and other tax problems being carried out by EPA under the Resource Recovery Act of 1970 should lead to necessary changes.

I ask unanimous consent that Mr. Dominick's speech be printed in the RECORD so that others might see the kind of directions that must be taken in this field.

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

RECLAIMING OUR NATURAL RESOURCES

Nearly 60 years ago, when this National Association of Secondary Material Industries was formed, few people would have understood the meaning of the word "recycling."

Now, in this era of environment, the terms recycling, reclaiming, and reusing, are catchwords of the ecological movement.

Across the country citizen action groups have voluntarily created recycling centers in order to reclaim valuable natural resources so that they may be used again.

As an example of business interest, the aluminum industry has recognized the value of reclaiming aluminum products. This past year alone the Aluminum Association reports that more than three-quarters of a billion cans were recycled, eliminating litter while conserving natural resources.

Citizen action, coupled with the efforts of the secondary materials industry and other business concerns, has shown that significant amounts of our resources can be saved and reutilized.

We know, for example, that about 45% of this country's total available copper is recovered from scrap, that about 10% of our total raw paper needs are filled by recycled paper, that about 30% of all aluminum is reclaimed and that over 50% of our lead needs come from scrap.

While these results are good, I believe that we must do a better job of reclaiming the natural resources of this country and seeing that they are reused when practicable.

The Council on Environmental Quality reports that industrial solid wastes alone generate 110 million tons of waste per year; 15 million tons of metal; 30 million tons of paper and paper products; with the rest consisting of waste plastics, textiles and assorted materials.

The industrial wastes are expected to double to more than 200 million tons per day by 1980. And residential, institutional, and commercial solid wastes, now piling up at a rate of 250 million tons per year, are also expected to double by 1980. Clearly, great efforts will be needed to solve the growing solid waste problem.

The Environmental Protection Agency has been given the primary Federal role in examining the problems associated with recycling of solid waste materials. We are concerned with the economics of resource recovery. We are concerned about the present legal discrimination on secondary materials imposed by freight rates. We are helping to develop new technology that will increase the opportunity for resource recovery, and we are demonstrating the practical application of such technology.

EPA is aware of the many economic factors that impact the secondary materials area. We know that virgin raw materials costs have in many cases been as low as the cost of secondary materials. We know too that natural resources are concentrated and tend to be more homogeneous in composition than waste materials.

In addition to the economic factors that have worked against recycling, the public attitude, in the past, has been negative when faced with the decision to purchase products containing material made from scrap. But the public attitude is changing to one of acceptance of products made from nonvirgin material, provided that the product meets performance requirements. This change in attitude was recognized recently by William Ruckelshaus, Administrator of the Environmental Protection Agency, when he suggested that aluminum companies might well advertise their products as containing recycled material.

With a view toward the marketing problems of secondary materials, the Agency has identified and is analyzing a number of economic incentives and disincentives which would be applied to increase the recycling of solid waste material. It must be noted here that we do not yet have the answers on the best mix of these measures. Thus, we cannot establish a public policy at this time that will commit us nationally to an incentive-disincentive course with confidence. But, some of the measures we are studying might allow:

1. Lowering depletion allowances on virgin materials or giving allowances in the form of direct subsidies including price supports on secondary materials.

2. Reduction of freight rates for shipping secondary materials. While it will be some time yet before we have our final figures in this area, we do generally support the arguments advanced by the NASMI with respect to ocean and surface freight rates. And, we will work closely with NASMI in making our views known to the Congress, the ICC, the Maritime Commission, and others.

3. Imposition of a direct tax on disposable items that enter the solid waste stream, the size of the tax set to reflect the disposal costs of the various material. Or, conversely, a tax credit could be given for those products which utilize secondary materials and which are readily recyclable.

4. A user deposit could be placed on nonreturnable bottles and other approaches, primarily the tax approach, could be applied to the problem in general.

5. Government purchasing, at all levels and wherever applicable, could specify recycled materials. At President Nixon's request last year, the General Service Administration changed specifications on a number of paper grades to require the use of recycled paper by the government. It should be noted too, that we are exploring with the GSA and the National Bureau of Standards the broader issues of Federal standards that apply not just to government purchasing, but for example, to NBS material standards that could impact on the building industry.

6. Investment tax credits and accelerated amortization for industry-purchased recycling equipment could be provided.

7. Various forms of restrictive legislation could be enacted to inhibit or halt the flow of specific items in to the solid waste stream.

Indicative of the importance that the Administration is placing on recycling is the statement by President Nixon in his Environmental Message of February 8. The President said, ". . . Federal tax policy should also offer recycling incentives, (and) the Treasury Department is clarifying the availability of tax exempt treatment industrial revenue bond financing for the construction of recycling facilities built by private concerns to recycle their own wastes."

Surely these measures that we are reviewing could have significant impact on the proposition of resource recovery, if properly mixed and implemented. Many of the possibilities I have mentioned would be favorably received by this association, for many of them were suggested to the Joint Economic Committee in testimony last November by the vice president of NASMI, Mr. Mighdoll.

Certainly, working to solve the economic difficulties that beset the recycling industry will be occupying a good portion of our time. But, we are also moving ahead in the area of technology innovation—seeking to spur on the development of more efficient and economically viable reclamation methods.

In this respect we are funding a refuse milling demonstration project in Madison, Wisconsin. The purpose of this project is to centrifugally separate metal such as gears and engine blocks which have damaged shredders and rendered bulk milling impractical. All the answers on this project are not available as yet, but if successful some of our solid waste disposal and reclamation problems could be solved.

A second project which is receiving considerable attention is an EPA funded project in Franklin, Ohio. This plant is designed for resource recovery, to recycle municipal solid waste, and to reduce the unwanted waste residues to one-twentieth of their original volume.

This plant is now separating paper from metal and turning the paper into cellulose fibers. The ferrous metals are segregated from the non-ferrous metals. The recycled products—paper, steel, aluminum and glass—can be sold, with favorable market conditions, for nearly $100,000 per year.

An additional phase of the Franklin operation will provide a system to screen, wash and sort bottles. This will begin some time this year. Further, the plant will be integrated with a sewage treatment plant so that water used in separating actions can be reused for the slurry lines. Industrial waste will be burned in a reactor where the heat will dehydrate sewage sludge.

A third project in which we have great interest is a cooperative venture between EPA,

the City of St. Louis, and the Union Electric Company. In this project municipal wastes will be shredded to a small particle size. When the ferrous metals have been magnetically extracted, the other waste material will be mixed with pulverized coal to fire a power plant boiler and generate electricity. The fuel value of municipal solid waste is about half that of coal. So, if the St. Louis project proves to be a success it could help solve the waste disposal problems of many of the country's large cities.

These three projects in Madison, Franklin, and St. Louis hold great potential in terms of resource recovery and reuse of energy that was previously wasted. But, at this particular point in time the word "potential" must be emphasized. Some years will pass before the plants that I have described today will be found operating in many cities and towns.

I have spoken of the market problems involved in resource recovery and told you of some of the potential solutions we have under review. I have also mentioned the demonstration projects that are being developed and put into operation to reclaim resources and use previously wasted sources of energy.

Having told you about some of the steps the government is taking, I would urge the members of this association, and other industries that collect or process secondary materials to continue the work of resource recovery and to continue to lead the effort to channel valuable products back into the market for reuse.

I believe that the future will see new industries develop from the manufacture and sale of materials made from recycled goods. The innovation to come in this area will, in turn, provide you with new and profitable opportunities.

And, most importantly of all, we will solve a significant portion of the nation's solid waste problem while conserving and reusing great quantities of our national resources.

HEALTH CARE FACILITIES—STATEMENT BY DR. ROGER D. MASON

Mr. CURTIS. Mr. President, many rural communities are concerned about their health care facilities and the availability of doctors. Sometimes the notion prevails that only Washington is concerned. That certainly is not true. In fact, much is being accomplished by the citizens themselves in dealing with this problem.

In September 1971, the Subcommittee on Rural Development of the Committee on Agriculture and Forestry of the Senate held several field hearings. Among other places where hearings were held was Nebraska. At that time Dr. Roger D. Mason, a practicing physician of McCook, Nebr., and president of the Nebraska Medical Association, made a very fine statement. I think it merits a place in the CONGRESSIONAL RECORD. Mr. President, I ask unanimous consent that Dr. Mason's statement be printed in the RECORD.

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

HEALTH CARE FACILITIES

Mr. Chairman and members of the Subcommittee: I am Roger D. Mason a physician in the private general practice of medicine here in McCook. In addition I am presently serving as president of the Nebraska State Medical Association. I am very pleased for this opportunity to respond to your inquiry into rural America, its problems, and possible solutions to these problems.

There can be no doubt that Nebraska shares with the rest of the rural United States a need for an improved economic base. This should include not only an expansion of agriculture, but also diversification with location of appropriate other industry in America's more sparsely populated areas. However, my purpose in being here this evening is to stress the importance of community services in general and health needs in particular if we are to stem the tide of migration from rural to urban areas.

I am sure you will recognize the parallels between my comments on medical and health needs, and other areas such as education, transportation, communication, church facilities, and general commerce.

First, let me say that Nebraska is much like the rest of the United States in that the problems of health care delivery are quite variable in different sections. Providing for the care of the sick, injured or aged in eastern Nebraska, in relatively close proximity to Omaha or Lincoln, is quite different from providing that same service in the sandhills or here in Southwest Nebraska. Outstate Nebraska, that area outside metropolitan Omaha and Lincoln, is made up of about fifteen minor population centers each serving a relatively large surrounding agricultural territory. In eastern Nebraska we have two Indian reservations presenting their unique problems and along the North Platte River through the Panhandle there is a concentration of transient Mexican-American population. Many of the service communities in Nebraska are close to bordering states—such as McCook, Scottsbluff, Hastings and Beatrice—which creates some problems in programs such as Medicaid.

While discussing Nebraska's problems, medical manpower and manpower distribution must be considered. In this regard, I would like to present a few figures which will illustrate my point, I think. On a state-wide basis in 1940, the physician population ratio was 1:940 and in 1970 this ratio had dropped to 1:925. However, in the same thirty years, the area outside Omaha and Lincoln went from a ratio of 1:1149 to a physician population ratio of 1:1405. What I'm saying is that state-wide we have done a good job in retaining physicians in Nebraska but the rural areas have lost ground.

In considering these figures I believe they should be tempered with consideration of improved medical facilities, better transportation, etc which has increased the productivity of our physicians.

Nebraska medical manpower discussions in the past have usually come around to mention of the fact that thirteen of our ninety three counties have no physicians. It should also be indicated I believe, that nine of these thirteen counties have a 1970 census of 1,054 or less. With fairly adequate roads and transportation most of these areas are reasonably close in time to surrounding medical facilities.

Throughout rural Nebraska, we have some difficulty in providing allied health services, notably in the fields of social workers, physical therapy, and neurology. At present, these services are available, but primarily only with considerable expenditure for travel.

After mentioning some of the problems in health care in rural Nebraska, I would like to briefly mention some of the existing programs aimed at solution of these problems. In order to reduce the time involved in giving my oral remarks I have here some material prepared by the University of Nebraska College of Medicine and the Nebraska Regional Medical Program. I would like to ask that these reports be added as an appendix to my remarks.

To first mention some of the programs which we in Nebraska feel are of proven value, I would like to discuss the preceptorship portion of the University of Nebraska curriculum. This is a four week required exposure of senior medical students to rural practice. The student may select any of fifty practicing physicians in outstate Nebraska to spend this period of time with. We feel this program has been instrumental in locating younger physicians in rural Nebraska.

Rural Health Day is held once a year in Omaha as a cooperative effort between the University of Nebraska, Creighton University, The Academy of Family Practice, and the Nebraska State Medical Association. Every town in our state is invited to send representatives to discuss possible future location with the medical students. This program too has been effective in securing physicians for rural Nebraska. One important ancillary benefit has been that the students have educated the communities as to factors important in attracting today's young physician.

The new Action Agency program recently inaugurated as a consolidation of Vista and the Peace Corps is being promoted at the University of Nebraska College of Medicine. In our state, this is known as NOVA (Nebraska Opportunity for Volunteers in Action). The target date for these students to begin service is September 26, just 17 days from now.

There are two unique programs in Nebraska aimed at improving medical services in rural Nebraska which I would like to mention. Creighton University has recently begun teaching some of their medical students to fly. The purpose behind this is to increase the rural physicians access to surrounding medical centers for referral as well as postgraduate education.

In addition, and under the sponsorship of the Nebraska Regional Medical Program, a 12 foot by 60 foot mobile trailer unit is operational in Nebraska. This is a cancer screening unit aimed at the most common cancer sites. This unit is programmed to supplement the care of patients in areas of low medical manpower as well as the Indian reservations. It will also supplement service to the migrant worker population.

One additional program deserves mention since it is aimed at improving the quality of care as opposed to programs aimed at the quantity of health services. This is the Coronary Care Training Program again under the sponsorship of the Nebraska Regional Medical Program. To date 806 nurses and 55 physicians have been trained in the newest techniques of caring for the patient with coronary occlusion.

Mr. Chairman, I can sum up my remarks by saying that the provision of services and improvement of the socio-economic status of out-state Nebraska is a pre-requisite for preventing the loss of population in our rural communities. These problems are complex to identify as well as to solve.

Thank you for the opportunity to present this statement on behalf of the Nebraska State Medical Association and the people of Southwest Nebraska.

ANTHONY LEWIS ON THE VIETNAM OFFENSIVE—"IN THE NAME OF GOD, GO"

Mr. KENNEDY. Mr. President, the columns by Mr. Anthony Lewis, published in the New York Times last Saturday and today, provide an eloquent denunciation of the appalling new escalation of the war in Vietnam, and the fresh agony it brings to the families of our prisoners. As Mr. Lewis states, the U.S. policy of Vietnamizing the war is a policy of perpetual war and perpetual American involvement in the killing and de-

struction in Indochina. So long as the war goes on, so long as American planes are bombing Indochina, there is no chance whatever that we shall get our prisoners back.

The American people want the war to end. Quoting the words of Cromwell in dismissing the Long Parliament, Mr. Lewis applies that exhortation to the position of the United States in Vietnam—"In the name of God, go."

Mr. President, I share the views of Mr. Lewis, and I believe that millions of Americans share them also. I ask unanimous consent that his columns be printed in the RECORD.

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

[From the New York Times, Apr. 8, 1972]

IN THE NAME OF GOD, GO

(By Anthony Lewis)

Richard Nixon, December, 1971: "Vietnam will not be an issue in the campaign as far as this Administration is concerned, because we will have brought the American involvement to an end."

LONDON, April 7.—The Nixon withdrawal from Vietnam has always had something of an illusory character. While American ground troops left, other military involvement continued or intensified. From carriers and from enlarged bases in Thailand, American bombers attacked Laos and both parts of Vietnam. American planes and supplies supported a larger war effort in Cambodia. The phantom C.I.A. army fought in Laos.

Many Americans nevertheless believed—because their President said so and they wanted to believe—that their part in the Indochina war would soon be over. Now that belief must be dead—gone the way of all the other officially propagated illusions about Vietnam.

The South Vietnamese, we had been told, were making remarkable progress, their million-man army confident, their political situation stable. The Communists had never rebuilt their southern infrastructure after the losses of Tet 1968. The war was going better than we had hoped.

It took less than a week for the new Communist offensive to shatter that picture and to send President Thieu of South Vietnam crying for help. Of course he cried to Richard Nixon. The response was the familiar one: more B–52's, more destroyers, more carriers, more close air support, more bombing of the North, more U.S. involvement.

Surely now there cannot be any informed person on earth who fails to understand what is the result of the Nixon-Kissinger formula for "peace" and "stability" in Indochina: perpetual war and perpetual American involvement. Unless the war ends on our terms, with Communist acceptance of the Thieu Government, we shall keep killing the inhabitants of Indochina—from a distance.

The Communist offensive did put Mr. Nixon in a difficult position. No American President wants to be seen abandoning a policy under duress, this one least of all. But it was Mr. Nixon and Henry Kissinger themselves who painted themselves into the corner where they have no options except more of the destruction that everyone knows is morally outrageous and politically useless.

When Mr. Nixon took office three years ago, he could have recognized the political realities of Vietnam and left the internal forces there to work out their own balance. Instead he has continued to make the attempt to impose our solution.

He did so, according to report, on the advice of Henry Kissinger that the other side could not indefinitely withstand our superior force and would have to agree to terms. In short, we could bomb them into settling.

But that was the oldest, most tattered official illusion of them all. From Lyndon Johnson's tragedy came the lesson that in a limited war the United States has limited power to impose its terms. If Henry Kissinger did indeed ignore that lesson, he will have a heavy reckoning to pay in history for three more years of pointless death in Indochina—or four or five or ten. For on the present policy, how can anyone pick a date when the war will end?

The Kissinger-Nixon justification for going on in Vietnam is that we must preserve our credibility as a world power. But a great country can justify such relentless destruction of another only if its own safety, its vital strategic interest, is urgently at stake. And virtually no one believes that about Vietnam any more.

A leading British student of international security and war, Michael Howard, has some apt comments in the April issue of Encounter. It is a tough-minded article, cautioning idealists that world stability will always require "the acceptance of necessary injustice"—for example, dealing with the Greek military regime.

But as a realist, Mr. Howard says of Vietnam: The evils that would result from Communist domination there are "purely notional and arguable," while "the evils which are perpetuated in preventing it appear so actual and so evident that the 'order' in whose name they are carried out stands . . . condemned." He concludes:

"Whatever the arguments may be about regional or global stability, about dominoes or deterrence, what the United States has been doing in Vietnam is wrong and ought to be stopped."

The American people have evidently believed for some time that President Nixon's objective—preserving Nguyen Van Thieu—is not worth what we are doing to Indochina and to ourselves. They want an end to American involvement, with its corrupting effects on our reputation abroad and our peace at home. They would say what Cromwell said in dismissing the Long Parliament: "In the name of God, go."

[From the New York Times, Apr. 10, 1972]

THE FORGOTTEN VICTIMS

(By Anthony Lewis)

LONDON, April 9.—President Nixon's response to the Communist offensive in Vietnam, his escalation of air and naval bombardment, has special and agonizing meaning for one group of people: the wives and families of American prisoners.

More than anyone else, they must realize that the Nixon policy now offers no realistic hope of an end to American military involvement in Indochina. And in all likelihood that means no end to the captivity of their husbands, sons, brothers and fathers.

The feelings of the wives and families are likely to have political significance as the year 1972 goes on. Mr. Nixon, recognizing their potential as a focus of antiwar emotions, has taken great care with the families: his aides have cultivated them, and he himself made a surprise appearance at the last meeting of their organization. But resentment of the President—a feeling that he has defaulted on a pledge to get the men out—is now growing.

The President's credibility among the prisoners' families was falling before the latest military turn in Vietnam. An example of that trend can be seen in Mrs. Audrey Craner, whose husband, Lieut. Col. Robert Roger Craner, was shot down over North Vietnam on Dec. 20, 1967. She has had one brief letter from him since then, and she does not know whether any of her letters to him has got through.

Mrs. Craner is English-born, and she struggles in a very English way to contain her anguish. She has not wanted her husband's plight to be caught up in politics; she has resisted those among the families who favor politicizing the prisoner issue. But now, painfully, her words are changing.

"Mr. Nixon keeps saying the war will not be an issue in the election," Mrs. Craner said a while ago, "but I can't believe that. He came in on a promise to end the war. He made clear in his last [January] speech how difficult that is, but he made the promise.

"I assume that Mr. Nixon means what he says when he says he will be responsible for the prisoners, so he must expect us to hold him responsible. If he gets those men out, I'll be glad to back him in the election. I'm sorry to be so selfish, but . . ."

Mrs. Craner appreciates the argument for continuing American effort to keep the Government of Nguyen Van Thieu in power in Saigon. She says that her husband is a career officer who understood the risk of war and would have thought his captivity a burden to be borne for the sake of American political objectives. But then she says: "That's what I believe he would have said five years ago, but now I don't know."

Others among the prisoners' families are much less cautious than Mrs. Craner, much more politically committed. An example in Washington, D. C., is Sheila Cronin, whose brother was shot down on Jan. 13, 1967. He is Navy Lieut. Comdr. Michael P. Cronin.

Miss Cronin and others are working in their spare time to put pressure on President Nixon by supporting candidates who would end the war and get the prisoners home. They expect to go to both national conventions.

"When the President spoke in January about the secret peace talks," Miss Cronin said, "we didn't understand a lot of things. We went to the White House and spoke with a staff man from the National Security Council. I asked him a lot of questions, and I didn't get a straight answer to a single one. At the end he told me that I should give their peace plan ten months—which would keep us quiet long enough to get Nixon re-elected."

One episode played a significant part in the politicizing of Sheila Cronin. That was what she calls the President's "misrepresentation of the facts" in his television interview with Dan Rather of C.B.S. last Jan. 2.

In that interview the President said flatly that the United States had offered the North Vietnamese "the deal of saying if we set a deadline" for total withdrawal, 'then they will give us back our P.O.W.'s." The North Vietnamese, he said, had 'totally rejected" this proposal—"a very cruel action on their part."

But that was fiction. The United States has never disclosed having made any such proposal for an even exchange—total withdrawal in return for the prisoners—even in the secret talks.

There is certainly no assurance that the other side would have accepted the idea. They might have last summer, before General Thieu's reelection; they might not. But there has never been any sign of willingness on Mr. Nixon's part to make such a deal, at least to date.

Even by our degraded standards of political truthfulness, such a calculated misrepresentation was, and is, staggering. The wives and families are not likely to forget it—or, if they have any access to the public conscience, to let the rest of us forget it.

PROXMIRE WARNING ON NUCLEAR DISASTER

Mr. PROXMIRE. Mr. President, this morning the Military Spending Committee of Members of Congress for Peace

Through Law held a news conference on the wisdom of proceeding with the ULMS program on a crash basis proposed by the President. I ask unanimous consent to have printed in the RECORD the statement I made at that conference.

Mr. President, I worked long and hard in the preparation of this statement. I think it has very great significance, and I hope that Members of Congress and as many as possible of the national readers of the CONGRESSIONAL RECORD will read the statement thoroughly.

I also ask unanimous consent to place in the RECORD the report compiled by the staff of the Members of Congress for Peace Through Law.

Much of the work on this effort was done by Ross Hamachek, an extraordinarily gifted young man whose contribution to this report is in my view very great indeed.

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

ULMS PRESS CONFERENCE

This is the first press conference of this committee of the Members of Congress for Peace Through Law in a long time.

Before I get into a substantive discussion of ULMS—which of course is the purpose of this meeting—I stress that this committee and this senator are both determined to do all we can to strengthen our military forces. I believe firmly in the scroll I have just framed and put on the wall in my office. It reads: "Defense is our national insurance policy. We must (I repeat) must be number one."

And how do we stay number one?

How do we know? How are we qualified to speak out with authority on a subject on which life and freedom depend and depend on the right answer?

How we wish we could say with Vince Lombardi: "Winning isn't the best thing; it's the only thing." Lombardi was a good—in fact a wonderful man; but on this statement it's hard to resist marveling at his arrogance.

In the same way it's hard to resist marveling at the arrogance of those who are sure that there's only one answer on the nuclear confrontation and that they alone have the answer.

The best claim to consideration any of us can have in this life-and-death debate is that we suffer good, common wholesome self-doubt.

To put it another way. No man is God. None of us is infallible. We all make mistakes including bloopers of monumental dimensions in fields where we have devoted our lives, where we have had the best training.

This is not to say that Ignoramuses know more. It is simply to say that we should be cautious about all conclusions, no matter how divinely inspired they may seem, or how expert they may in fact be, including our own and including the ones that I will suggest today in connection with ULMS.

This morning I am specially conscious of the fact that I am dealing with a weapons system that could make the difference in preserving this country's freedom against all-out nuclear attack. I also realize that any time both this country and the Soviet Union make any advance in nuclear power, then the crushing catastrophe that could end most life on earth and end civilization comes closer.

Let's also acknowledge that this committee has singled out ULMS in the past as a weapons system we could and did enthusiastically support. Last year I contended that the Defense Department was going too slow on it, and it was. I said DOD ought to shove ULMS along faster. Everyone knew that the Committee said we should be spending less on weapons that couldn't do the job and God knows I supported that position. But there was little recognition of my own enthusiastic support of ULMS. *Was* I right then? *Were* we spending too little on ULMS? What do you think?

And now, the committee and I of course feel we should push this program ahead just as fast as we can justify doing so. We need it. If I could wave a magic wand, and have ULMS all in place right now—complete and ready to do the job, I would wave it. Why wouldn't I want instant, devastating power for my country?

But of course there is no magic wand. There is no sure, quick way. In fact there is no quick way; and there is no sure way. There is just the plodding, agonizingly, slow progress of fallible human beings—little better or worse than any of us—human beings who make mistakes—made them in the past—will make them in the future and make them now.

So with full determination to achieve an ULMS that will do the job and will do it as fast as good sense indicates is possible, we strongly oppose this year's Defense Department's decision to throw everything including the kitchen sink into the program with an incredible one thousand percent single year increase in funding. That is far too fast to make anything except big mistakes.

Now am I not being inconsistent?

Well, how about it? I'm not asking you to take the word of any group of Senators or Congressmen for this. I'm asking you to take the implications of this year's DOD decision to smash ahead full tilt on ULMS as compared with its decision last year to go slower than Senator Proxmire wanted to go.

If I'm a naive ULMS dove this year, I was a bloodthirsty ULMS hawk last year. Which was it? The answer of course has to be: Neither!

Gentlemen what I have just read—is a statement I prepared and wrote last night at my home. During the past week the staff of MCPL prepared another statement which of course is available to you. I'm very proud of our staff. I prepared this statement I have just read before I read theirs.

Before I call on Congressman Don Fraser who worked with the staff and me on the report, I will summarize the points made by the staff in its prepared statement. And after Congressman Fraser's statement we will be ready for your questions.

The points are these:

1. MCPL has decided to concentrate on four major weapon systems this year: ULMS, the new Aircraft carrier, the F–14, and the WACS bomber defense system.

2. The Request for ULMS this year is $977 million. $330 million of this is earmarked for a new long range missile system the ULMS 1, the balance for development and long lead production work on the new ULMS submarine itself.

We support the $330 million in missile related funds—we do so with enthusiasm.

But we believe the develop work should be funded in fiscal 1973 at no higher than a $50 million level.

We naive doves would increase this devastating military program over last year—not by 50%—not just double—or triple. We'd increase it F-O-U-R TIMES?

It is true we would cut $600 million below the DOD request.

The report has our other conclusions and recommendations.

Here are the highlights.

3. We remain convinced that our sea-based deterrent has the best prospects of all our strategic systems for long-term survivability, and we fully support all steps necessary to preserve its strength and invulnerability. Our recommendations are quite consistent with this objective. They call for ULMS funding almost four times larger this year than last and a major new missile development program to improve the capabilities of our fleet. The ULMS 1 missile will make our Polaris submarines much more difficult to detect, will expand their time on station, and will give them improved target coverage. If introduction of the ULMS 1 is accompanied by quieting improvements on which the Navy is already working, our current submarines can be given virtually all the new capabilities which the Navy is projecting for ULMS.

Our Polaris submarines are not suffering from the ravages of age. They will need replacements in the 1985-1990 time period, but there is no need for crash development and deployment of their successors ten years before that time.

4. The American taxpayer cannot afford the conspicuous consumption of new weapon systems which has become the military way of life. This is especially true when the long-term nature of the ASW threat is so unclear that any new submarines we build today could be rendered obsolete in much the same way and at much the same time as the submarines we now have.

5. A new submarine construction program is not needed now to match a Soviet submarine buildup. We do not know what plans the Soviets have for expansion of their submarine fleet, but we do know that our submarines are much harder to find and have ten times more warheads per ship. Under these circumstances, we should not allow Soviet expenditure of $100 million on a 42nd ballistic missile submarine to propel us into a $30 billion investment on ULMS and the world into a new sea-based arms race.

We should instead proceed with the ULMS 1 missile, but defer any major submarine construction program for at least one year and look to the SALT negotiations for limitations on both the Soviet and United States submarine fleets. If these negotiations succeed, major development work on a new submarine system should not be necessary until after 1975. If no agreement is reached, Soviet actions should be monitored closely and careful consideration given to alternative United States responses. Additional submarine construction may become necessary, but there is much to be said for a smaller, less detectable, and less expensive ship than the present high-speed ULMS design.

REPORT ON ULMS

(A research paper for consideration by the Military Spending Committee)

SUMMARY AND CONCLUSIONS

The Navy's Undersea Long-Range Missile System (ULMS) has been in the study and design phase since its inception in 1969. We have supported the ULMS program in the past as a long-range hedge against threats to and as an eventual replacement for our Polaris and Poseidon missile-firing submarines. We agree with the Administration that our sea-based deterrent has the best prospects of all our strategic offensive systems for long-term survivability, and we fully support all efforts necessary to preserve its strength and survivability.

The ULMS program was funded last year at a level of $104.8 million. This year's request—including $35 million in presently deferred supplemental fiscal 1972 funding—is $977 million. Approximately $330 million of the pending request is earmarked for work on a new long-range missile system (ULMS 1) and the balance for new submarine development and production work. It is the Navy's present intention to be able to deploy the new missile in our current submarines in 1977 and the first new ULMS submarine in late 1978.

There are two possible justifications for

the almost 10-fold increase in fiscal 1973 ULMS funding. It can be viewed, first, as a response to Soviet submarine fleet expansion, and second, as a modernization and replacement program for our Polaris and Poseidon submarines. We do not believe that large-scale funding for a new submarine system as opposed to funding for a new long-range missile system can be adequately justified on either of these grounds at this time.

Soviet Submarine Expansion. It is true that the Soviets have already deployed 25 Yankee class ballistic missile submarines and that another 17 are now under construction. It is true, also that deployment of all those submarines by the end of calendar year 1973 would give the Soviets one more modern ballistic missile submarine with sixteen more sea-based missiles than the United States. While this Soviet buildup is grounds for serious concern, it does not justify an accelerated new submarine construction program at the present time.

For one thing, numbers of submarines and sea-based missiles are only two indicators of a nation's sea-based deterrent strength. Such factors as numbers of warheads, submarine detectability, missile range, and geographical considerations also play an important role. And in each of these areas the United States has and will enjoy for some time to come significant advantages over the Soviets.

Second, it is impossible to predict what additional improvements in their sea-based deterrent the Soviets may undertake or what success they will enjoy in their endeavors. They may seek to deploy considerably more than 42 ballistic missile submarines, or they may stop at or near that number. They may or may not seek to put in their present submarines longer range missiles with independently targetable weapons to match the Poseidon program. It is true that the Soviets have developed a new SLBM with a range equal to that of Poseidon; but it is also true that they have yet to conduct one successful MIRV flight test of either a land-based or sea-based missile.

Third, an accelerated new submarine construction program is not needed now to protect United States interests against this ill-defined Soviet threat. Even under scenarios much worse than might be expected, we could defer such action for one or two years yet still respond in plenty of time to prevent the Soviets from gaining any significant advantages in sea-based deterrent strength.

Fourth, an accelerated new submarine construction program now could jeopardize SALT negotiations for numerical limitations on the size of sea-based deterrent forces. The Administration has increased this prospect by its implication that work on ULMS might proceed with little change in the current timetable even if such limitations were achieved, as a replacement rather than a supplement to our Polaris submarines. If ULMS, in fact, is not negotiable, it is difficult to see how it could provide the Soviets with incentive to accept such limitations.

We could have a much better bargaining position at SALT if we proceeded now with work on a new long-range missile system only. Initiations of such work would serve as ample evidence of our determination to protect our sea-based deterrent. A new submarine construction program would be the logical *next* step if sea-based force limitations are not achieved.

For all these reasons, we should not allow Soviet expenditure of $100 million on a 42d ballistic missile submarine to propel us into a $30 billion investment on ULMS and the world into a new sea-based arms race. As President Nixon noted in his recent foreign policy message to the Congress: "The capabilities of both the United States and the USSR have reached a point where our programs need not be driven by fear of minor quantitative imbalances."

There are other positive risks, too, inherent in the present accelerated program for ULMS development—risks of cost growth and schedule slippage and risks of premature commitment to an ill-advised design.

Modernization and Replacement. An accelerated new submarine construction program cannot be justified any time in the near future simply as a necessary modification and replacement of our Polaris and Poseidon submarines.

First, *none* of our current submarines will reach the end of their projected 25–30 year service lives until the 1985–1990 time period. The prospect of physical obsolescence cannot be used to justify anything like a 1978 initial deployment date for a new replacement submarine.

Second, all foreseeable prospects for technological obsolescence can be countered just as effectively by appropriate modifications to current submarines as by the development of replacements for them. Incorporation of a new longer range missile system, such as the ULMS 1, would increase their survivability, improve target coverage, and increase their time on station. It is also probable that putative ULMS advantages such as quietness of operation and reduced maintenance times could also be reduced by a gradual modification program. Under these circumstances, we believe that money spent for new submarine replacements would be money wasted at the present time.

Third, money spent now might be money wasted for another reason as well. While our current submarines are secure today from Soviet ASW techniques—and while they could be made more so by an appropriate modernization program—we know very little about the long-term nature of the ASW threat. What form the threat will take, and what steps will be required to counter it, it is impossible to predict at the present time. There is a danger, therefore, that any new submarines we build today could be rendered obsolete in much the same way and at much the same time as the submarines we now have.

We do not believe that the ULMS program, as presently structured, can be justified. Accordingly, we oppose that program and make the following recommendations for an alternative course of action. The fiscal year 1973 impact of these recommendations would be to reduce the Administration's budget request for ULMS from $977 million to $380 million. This amount would still permit a major initiative in fiscal year 1973 to increase the survivability of our sea-based nuclear deterrent.

RECOMMENDATIONS

(1) We call upon the President to express the willingness of the United States to defer for one year the accelerated development of a new submarine system, in return only for Soviet agreement to serious negotiations at SALT on the subject of sea-based force limitations. It is our belief that the President should be able to obtain such a commitment from the Soviets during his Moscow trip in May, at which time an interim SALT agreement restricting ABMS and land-based missiles is now expected to be signed.

(2) If such a commitment is obtained, the United States should make clear that its continued restraint during subsequent negotiations will be directly dependent on the restraint exercised by the Soviets themselves. In our view, such restraint will be shown if both sides forgo major additional ballistic missile submarine construction activities and confine their efforts to improving the capabilities of their current submarine fleets. If such restraint is exercised—and there are no developments threatening the survivability of existing sea-based forces—there should be ample time for negotiations to proceed without simultaneous submarine buildups on either side.

(3) Approximately $650 million of the $977 million fiscal year 1973 ULMS request now pending is earmarked for work on a new submarine and its non-missile subsystems. If a Soviet commitment to negotiations is obtained, we believe that $600 million of this amount should be disallowed. Such action would provide for a slight increase over fiscal year 1972 ULMS funding of roughly $40 million for non-missile work. We believe that $50 million should be more than adequate in fiscal year 1973 to continue Navy submarine design studies and preliminary development work.

(4) In allocating this $50 million to specific uses, the Navy should be guided by two objectives. First, it should seek to reduce to the greatest extent possible the risk of cost growth and schedule slippage which would be inherent in a decision to greatly accelerate the pace of ULMS development in fiscal year 1974. Second, it should minimize as much as possible the risk of premature commitment to a particular submarine design. Major development expenditures on a new propulsion plant, especially, should be avoided at this time.

(5) During the next year both the Department of Defense and the Congress should conduct an in-depth review of alternative new submarine designs. Special attention should be focused on the Navy's present plan to build new submarines which would be faster and much larger than our Polaris and Poseidon fleet. It should be clearly demonstrated that all costly design requirements are justified by a clear-cut military need.

(6) Approximately $330 million of the pending ULMS request is earmarked for work on the new ULMS 1 missile system. This funding should be fully approved. Development of a long-range missile system—together with other modifications to our current submarines on which the Navy is now working—will significantly enhance the survivability of our present fleet against all foreseeable threats. If development of this new missile system proceeds at the presently projected rate, it should be available for initial deployment in 1977. In the absence of any major change in the ASW threat, both the new missile and our current submarines should remain an integral part of our sea-based deterrent well into the 1990s.

(7) The Navy should accord high priority to its current "SSBN Defense" program, the purpose of which is to identify and develop suitable counters to new ASW techniques which could jeopardize our Polaris and Poseidon fleet. The knowledge gained from this program should be used to make future reductions in the detectability of that fleet and as a continuing source of ideas for new submarine designs.

(8) If SALT negotiations proceed well, the Navy timetable for a new submarine construction program should be determined both by changes in the ASW threat and the eventual need to replace our current submarines. Such a program should be undertaken in sufficient time to meet any changes in the ASW threat which have been identified and which cannot be countered by modifications to our Polaris and Poseidon fleet. Unless such threat changes have been identified, it should not be necessary to move beyond the study and design phase of a new submarine construction program until fiscal 1976 or later. That starting date would provide ample time for the leisurely development of a new submarine system. Even if development times were stretched from the roughly six years implicit in the Administration's present timetable to as much as 10 years, the first new submarine would still be available in 1985, at which time the oldest of our current submarines would be only 25 years of age. It would then be possible—with a construction rate as low as two or three submarines per year thereafter—to replace all our current

submarines inside their projected 30 year lives. We believe that this timetable, either the development or production phases of which could be compressed if the threat required, makes much more sense than the commitment now of vast sums to a new submarine system of unknown long-term value.

(9) As soon as possible, the issue of restrictions on strategic ASW operations should be placed high on the SALT agenda. Our sea-based missile submarines are now secure for the foreseeable future, but the possibility of a new ASW breakthrough—one which cannot be countered by any new submarine design—cannot be dismissed out of hand. We recognize that restrictions on ASW research are not now feasible, since compliance with them could not be verified. It should not be impossible, however, to work out verifiable restrictions on the actual deployment of strategic ASW systems or on the use of such systems when deployed.

A detailed analysis of the reasons for our conclusions and recommendations follows.

BACKGROUND

The Navy's ULMS program was initiated in 1969 to provide a long-term hedge against threats to our Polaris and Poseidon submarines and an eventual replacement for them. The program has been in the study and design phase since that time. Funding requests have been small, but growing, and the parameters of the new program have been rather ill-defined until recent months.

Three factors have recently combined, however, to make fiscal year 1973 a year of decision for ULMS within the Executive branch and to influence the decision finally made.

First, prior year funding had taken the program to a possible jumping off point. A choice had to be made for the first time between keeping the program in the preliminary development stage and moving forward in a major way.

Second, the need for such a choice had given rise to a dispute within the Defense Department and the Navy itself over the most appropriate course for ULMS development. In very simple terms, some experts believed that the time had come to develop and build a new submarine for deployment in the early 1980s, while others argued that a new submarine system was not yet needed, since all foreseeable near-term threats could be countered instead by incorporating a new long-range missile system in the present Polaris and Poseidon fleet.

Such was the substance of the ULMS–EXPO controversy which surfaced briefly in the press last summer. Development of the EXPO (for Extended Range Poseidon) missile, its supporters argued, would enable us to defer major development expenditures on ULMS until at least the mid-1970s, with no risk to the long-term survivability of our sea-based nuclear deterrent.

This ULMS–EXPO controversy was fudged over, rather than resolved, in the Defense Department's decision-making process. Symbolic of this fact was a change in name for EXPO. To minimize its apparent "threat" to the ULMS submarine system, it was renamed the ULMS 1 missile and made an integral part of the ULMS development program.

The scope of the new program was first defined in a September, 1971 Development Concept Paper (DCP) on ULMS. The paper called for the phased development of both a new long-range missile system for our Polaris and Poseidon submarines and a new submarine system. Fiscal year 1973 funding was tentatively established at the time in the $400 million area, with the major part of the total earmarked for work on the new missile. At the same time, sufficient funds for submarine development work were provided to support a 1981 initial deployment date.

Only thereafter did a third factor come into play, in the form of a faster than expected Soviet submarine buildup. Secretary of Defense Laird commented on the point in his recent posture statement to the Congress:

"The Y-Class ballistic missile submarine force of the Soviet Union could be as large as our POLARIS/POSEIDON force by the end of next year, rather than in 1974 as I predicted last year."

A decision was therefore made in January to accelerate development and construction work on the new ULMS submarine system. Fiscal year 1973 funding for ULMS was set at $942 million and an additional $35 million in fiscal year 1972 supplemental funding was also requested. The Senate Armed Service Committee decided to defer action on the supplemental request and to consider it in conjunction with its fiscal year 1973 authorization hearings.

As presently constituted, the ULMS program calls for the development of a new submarine system and two associated missile systems. The submarine itself would be more than twice the size of our Polaris and Poseidon submarines. It would be able to carry more missiles (20 to 24 per boat, compared to 16 for Polaris and Poseidon), at a faster maximum speed, and it would incorporate the latest available quieting techniques. The proposed fiscal year 1973 funding of about $650 million for submarine work would support deployment of the new submarine as early as 1978. Approval of this funding by Congress would probably commit us to that course. As Assistant Secretary of Defense Moot noted earlier this year: "You do not move this fast unless you intend to build submarines and new missiles."

The 4,500 mile ULMS 1 missile is still funded in the new program at essentially the same amount. This funding is designed to support a calendar year 1977 deployment of the new missile in our current ballistic missile submarines. Work on the 6,000 mile ULMS 2, which would fit only in the new ULMS submarine, is scheduled to begin at a later date.

The Navy has said little for the public record about the likely long-term cost of the ULMS program. Estimates from other sources, however, have ranged to $30 billion for a 30 submarine program, an average of $1 billion per ship through the first ten years of operation. The following table, based on known information about ULMS and comparisons with the Polaris and Poseidon programs, shows that these estimates are by no means unrealistic; in fact, they may be low:

ULMS PROGRAM 10-YEAR SYSTEMS COST PROJECTIONS

Research, development, test, and evaluation

Submarine costs, including all non-missile subsystems and integration work, $800 million.

*Maneuvering re-entry vehicle (MARV) development for new missile systems, $600 million.

*Development of the ULMS 1 missile, $2,100 million.

Development of the ULMS 2 missile, $1,500 million.

Procurement

Submarine costs (30 submarines at an average ship construction (SCN) cost of $400 million), $12,000 million.

*ULMS 1 missile (supply for 500 launchers at an average cost of $8 million each, including spares, integration, etc., sufficient for 31 Poseidon submarines or a somewhat smaller mix of Poseidon & ULMS submarines), $4,000 million.

ULMS 2 missile (supply for 600 launchers at an average cost of $11 million each, including spares, integration, etc., sufficient for 30 ULMS submarines with 20 tubes each), $6,600 million.

Operation and maintenance

30 ships at an average of $30 million per year for 10 years, including all costs of crews, $9,000 million.

Dedicated ULMS refit facilities

One facility per 15 ships, first at cost of $1.8 billion, second at cost of $1.2 billion: $3,300 million: $39,500 million.

Further appreciation of the extremely high long-term costs inplicit in the Navy's present plans can be seen also by comparing the costs shown in the table above with the costs of alternative action.

An ULMS 1 missile program, by itself, would include only the starred items and might come to $6.7 billion.

It would also be possible, if limited new submarine construction were deemed necessary to match a continued Soviet buildup, to build new submarines of the same general size as our existing submarines, but to put in them all available improvements consistent with such size constraints.

In essence, this approach would limit the speed of the new submarines to the speed of our current submarines and the range of its missiles to the 4,500 mile range of the ULMS 1. At the same time, however, it would enable us to respond more quickly to a continuing Soviet buildup. The first new submarine could be constructed in 1–2 years less time and the construction rate thereafter could be twice as fast using the same facilities—perhaps 5 or 6 submarines per year, compared to 2 or 3. A program of this kind would also be easier to "turn off" after the number of ships needed to match Soviet construction had been built, since it would involve far lower start-up expenditures.

This alternative would involve ship development costs no larger than $100 million, average SCN costs per ship of $225 million, O&M costs of $20 million per ship per year, and no new refit facilities. On these assumptions, a 10 submarine construction program, not including missiles, would come to $4.35 billion, compared to $9.6 billion for 10 ULMS submarines (which would require one new refit facility).

AN ANALYSIS OF THE PENDING ULMS REQUEST

I. The Sea-based Deterrent in Perspective

For the past three years Congressional critics of our defense policies have called repeatedly for increased United States reliance on sea-based strategic systems. This call has been a persistent theme in the opposition of many of us to programs like the Safeguard ABM, the new bomber defense system, the B–1 bomber, and the Minuteman III MIRV program.

A casual observer might be tempted to conclude that the tables have suddenly been turned. Just as the Administration appears to have heeded our call—by seeking acceleration of the ULMS development program—we seem to have changed our tune as well—by raising objections to the program.

Distorted as such an interpretation would be, our own critics may well espouse it. For that reason, and to lay the groundwork for our specific objections to the ULMS program as presently structured, a brief statement of our views on the role of sea-based systems in our strategic arsenal seems very much in order at this point.

Strategic Offensive Force Requirements. We believe that a stable mutual deterrence with the Soviet Union should be the basic goal of our strategic defense policy. We also agree with the Administration's statement of the three requirements of strategic sufficiency which must be met if we are to achieve that goal, in determining the size and composition of our strategic offensive forces.

First, they must be of sufficient size to give us a second strike capability adequate to deter an all-our surprise attack by the Soviet Union. That is, they must be able to absorb a surprise first strike yet still inflict on the Soviet Union a level of retaliatory damage sufficiently large to deter such a surprise attack from taking place.

Second, they must be sufficiently large that the Soviet Union cannot cause considerably greater urban/industrial destruction than the United States could inflict on the Soviets in a nuclear war. Parity is implicit in the concept of a stable mutual deterrent. Moreover, the level of damage needed to achieve deterrence is an inherently subjective judgment, which can best be given an objective status through shared perceptions on both sides.

Third, our strategic offensive forces must be composed of stabilizing systems, systems which provide the Soviet Union with no incentive for striking first in the heat of a crisis in order to mitigate the damage it would otherwise absorb.

The Primacy of Sea-based Systems. Measured against these criteria, sea-based strategic systems have significant advantages over their land-based counterparts, advantages which stem from their highly survivable and less provocative nature.

Both land-based missiles and bombers are fast becoming potentially vulnerable to preemptive enemy attack. In fact, if multiple warheads with improved accuracies are introduced, it will be easier and easier for one strategic booster to destroy more than one land-based counterpart on the other side.

Because land-based systems are becoming increasingly vulnerable, it is difficult to determine the reliance which should be placed on them in sizing one's forces for an adequate second strike capability. One effect is to drive the definition of such a capability ever higher and to encourage a build-up on both sides. The existence of these vulnerable forces also provides a destabilizing incentive for a damage mitigating strike in time of crisis.

The vulnerability problem is more severe with respect to land-based missiles than bombers, since the latter can be safely launched subject to recall, while adoption of a launch on warning policy for land-based missiles—or the construction of an extensive ABM defense—would itself have destabilizing effects. And land-based missiles are doubly dangerous because of their own provocative nature. They provide a destabilizing incentive to strike first not only in the hope of mitigating population damage, but also for the purpose of forestalling such a damage mitigating strike against oneself.

While bombers are not provocative because of their long flight times and while they can be launched subject to recall, they do have less warning time of an attack than missiles—so little, in fact, that one cannot place high confidence in their ability successfully to escape.

Sea-based strategic systems do not suffer from these defects. They are not vulnerable because they can hide in the ocean and not be found. They are also inherently less provocative. Even if accuracies are eventually developed which would permit the use of sea-based missiles against land-based missile silos, the destabilizing effect will be small if few such silos exist and if both sides have moved the bulk of their deterernt forces to sea.

The Policy Implications. In our view, the foregoing considerations have clear-cut policy implications. They dictate, in simplest terms, that both the United States and the Soviet Union should place increasing reliance on sea-based missiles as their primary deterrent force. This, we believe, is the best path to a stable mutual deterrence, in which both sides have credible and stabilizing deterrent forces and in which parity is achieved at reasonable total force levels.

A policy of increased reliance on sea-based missile forces does not imply that all land-based systems should be phased out completely on both sides. The United States and the Soviet Union have invested large sums in existing land-based systems. The potential vulnerability of these systems is growing, but it is not yet severe. And even when it reaches greater proportions, the timing required for a coordinated attack on land-based missiles and bombers simmultaneously will be very difficult to achieve.

These considerations suggest the wisdom of retaining existing land-based missiles and bombers in our strategic force structure for the foreseeable future, as relatively inexpensive but very useful insurance against technological breakthroughs which could threaten our sea-based missiles. At the same time, the dim future prospects of all land-based systems argue against major reliance on or large-scale commitments to new replacements for existing systems.

Emphasis should be placed instead on insuring the viability of our sea-based missile forces. These forces should be sized so that they themselves will provide a credible second strike capability. We should also take all steps necessary to insure their continued survivability against technological breakthroughs of the future.

Such is the perspective in which we view the role of sea-based missile systems. It has been our perspective in the past and it will remain so as we proceed to evaluate the need to accelerate work on ULMS.

II. The condition of existing sea-based forces

Our sea-based deterrent is presently comprised of 41 nuclear-powered ballistic missile submarines, developed in the late-1950s and deployed over the seven-year period between 1960 and 1967. Since each of these boats carries 16 missile tubes, they provide us with a total force of 656 sea-based missile launchers.

Three different types of missiles are presently carried by these submarines. Some of the ten oldest submarines still carry the Polaris A–2 missile, which has a range of 1,750 miles and a single nuclear warhead. Most of the 31 remaining submarines still carry the Polaris A–3, which can hurl three MRV warheads over a 2,880 mile range.

These 31 boats are now being converted, however, to carry the new Poseidon missile. The Poseidon is comparable in range to the Polaris A–3, but each Poseidon missile will carry an average of ten and up to fourteen independently targetable MIRV warheads. About ten submarines have already completed the Poseidon conversion process, and the remainder will have done so by 1976.

The Poseidon conversion program will produce a massive increase in the number of individual targets which our ballistic missile submarines can strike, a much bigger increase than could ever have been achieved by building additional submarines and fitting them with existing missiles. The targeting capacity of the 31 converted submarines themselves will expand ten-fold, from 496 to 4,960. The total expansion, of the ten oldest submarines are included, will be from 656 individual targets to 5,120.

The awesome size of this post-conversion force can best be gauged by contrasting it with the spectrum of high priority targets available in the Soviet Union. We could destroy 25 percent of the Soviet Union's population and 50 percent of its industrial capacity by targeting only its 100 largest cities. If the secondary effects of such a strike were considered, the damaged would be much higher still.

This destruction level—25 percent of population and 50 percent of industry—was long regarded by the previous Administration as the level needed for an adequate second strike, or assured destruction capability. Assuming two MIRVed warheads per city, ten such warheads per missile, and sixteen missiles per submarine, this level of damage could be achieved—with 12 missiles and 120 warheads left over—by only *two* ballistic missile submarines on station. This is a primitive calculation, but makes the point quite fairly. Even if necessary allowance is made for additional redundancy, other targets, missile reliability and the fact that existing ballistic missile submarines are on station less than 60 percent of the time, the massive size of our already programmed post-1976 sea-based missile forces is readily apparent. One could reasonably regard it as more than adequate to deter an attack on the United States.

These calculations assume, of course, that our submarines are and will continue to remain invulnerable and that no effective defenses will be erected against their missiles after they have been launched. The validity of these assumptions deserves exploration, since they are obviously critical in gauging the adequacy of our already programmed sea-based forces.

Future risks—ASW. Everyone agrees that Soviet ASW techniques pose little threat to our ballistic missile submarines at the present time. The reasons can be stated very simply.

First, ASW operations have to be carried out in sea water, an environment which reduces the detectable rang of all electromagnetic radiation far below that available in the atmosphere. Accordingly, traditional duces the detectable range of all electromagnetic radiation—methods such as radar and infra-red detection—are rendered ineffective, and the only sensing device of practical utility today in detecting nuclear submarines is sonar.

Second, sonar itself is subject to a variety of problems and cannot effectively locate submarines except at relatively short range.

There are two kinds of sonar detection methods, passive and active. Passive sonar entails no more than listening for the sound radiated by a submarine. Active sonar entails transmitting pulses of sound and detecting the echoes reflected from a submarine.

Passive sonar has a current operational range of about 100 miles and can be used over a wide range of frequencies. In both these respects, it has some advantage over active sonar. Its greatest advantage, however, it that the submarine remains unaware of its operation, whereas active sonar transmissions can be heard by a submarine well beyond the sonar's own detection range. Against this, passive sonar has no significant ranging or locating capabilities. The location of a submarine with passive sonar depends upon comparing signals from a number of different sonar installations, and even then, is relatively imprecise. Passive sonar is also dependent for its effectiveness on a high level of radiated noise from the submarines it is seeking. Quiet submarines, operating at low speeds, are indistinguishable from the normal background noise of the ocean, except at extremely short ranges.

Active sonar is not dependent for its effectiveness on noisy submarine targets and cannot be defeated by submarine quieting improvements. It also has much better ranging and locating capabilities. At the same time, active sonar has a direct range in current operations of only 10–15 miles, and as noted earlier, its use can be detected well beyond that range. This latter difficulty will continue to exist even if several promising prospects for a moderate extension of range bear fruit.

In addition, both kinds of sonar are affected by other problems. Range and accuracy can be degraded significantly by adverse sea conditions. More importantly, sonar capability is seriously affected by the irregular temperature characteristics of the

ocean. The differential refraction of sound waves at the boundaries between water layers of different temperatures creates blind spots. In particular, the sharp change of temperature at the bottom of the layer of mixed surface water, which will commonly occur at a depth of 100-700 feet, has the effect of creating a substantial sonar 'shadow' immediately below that boundary within which a submarine may be virtually undetectable from the surface.

A third point to note is that these characteristics of sonar detection methods make it much tougher to locate enemy ballistic missile submarines than to protect one's sea lanes against enemy attack submarines. To be successful in its mission, the anti-shipping submarine has to seek out enemy convoys and destroy them. In order to do this, it has to come well within range of the sonar equipment saturating the area around a convoy for the purpose of protecting it. The attack submarine may also have to expose some portion of itself above the waves or proceed at high speed in order to get into a suitable attack position, actions which would facilitate its detection. By contrast, the ballistic missile submarine needs only to hide itself in the ocean depths. Such a submarine might in principle be detected from time to time leaving its port or transiting narrow waters if concentrated enemy forces are employed. Even then, evasive tactics and 'assistance from general purpose forces would be available to prevent continued tracking unless several attack submarines were employed for each ballistic missile submarine followed.

Finally, far more than an ability to locate and track continuously a small number of ballistic missile submarines would be needed to seriously threaten our existing sea-based force. Unless almost all submarines could be tracked continuously and destroyed simultaneously, a preemptive strike attempt would invite unacceptable retaliation from the remaining missile submarines. The counter-force by attrition scenario, in which a Soviet attack submarine force would concentrate on a handful of ballistic missile submarines at a time, silently destroying them, makes no sense at all. Any unaccounted for submarines would immediately arouse suspicions of Soviet foul play, and general purpose forces assistance could be provided as to many of our remaining submarines as we saw fit, to protect them from attack until Soviet culpability had been confirmed. There is also a high probability that any Soviet attack upon our submarines could be detected when it was made, even if conventional rather than nuclear weapons were used.

For all these reasons, our existing sea-based missile force is secure today and likely to remain so for some time. It is universally agreed that we are ahead of the Soviets in acoustic submarine detection techniques and that neither we nor the Soviets are anywhere near the verge of a breakthrough in other detection methods. The only foreseeable threat to our submarines today is concentrated Soviet deployment of advanced sonar equipment in the still limited on-target areas in which our submarines now operate. The answer to this danger, it will be argued later, is not a new submarine system, but a longer range missile system for our current submarines.

Future Risks—ABM. Our deterrent is not seriously threatened, either, by anti-ballistic missile systems designed to shoot down incoming missiles after they have been launched. Again the reasons are quite straightforward.

First, we have already taken steps designed to counter possible Soviet construction of a large-scale ABM system. That has been the announced purpose of the Poseidon conversion program, which, as noted earlier, will provide a ten-fold increase in the number of independently targetable warheads which the 31 converted submarines can fire, from 496 to 4,960. Thus, even if a Soviet ABM system were 90 percent effective—a very generous assumption in itself—we would still be able to put as many warheads on target as we could before the threat of a Soviet ABM system first arose. And these remaining warheads would still be several times the number needed to achieve the level of damage long regarded as necessary for an assured destruction capability.

Even more important, it now appears likely that the Soviets will never build the large-scale ABM system which Poseidon was originally designed to counter. The prospects are good that we and the Soviets will sign by May an interim SALT agreement significantly restricting the number of ABM launchers permitted to both sides. Under these circumstances, Poseidon will provide us with even more warheads than our immediate needs require, thereby adding to the lead-time we would have available to respond to later Soviet initiatives in both the ABM and ASW fields.

Future Risks—Obsolescence by age. Nor is there any danger that our existing force will have to be replaced soon because of advanced physical age. As noted earlier, our present submarines were all deployed in the seven-year period between 1960 and 1967. They were expected then to have the same 25–30 year life as other large naval vessels, and there has been no evidence uncovered since to challenge that original projection.

In fact, what new evidence there is directly supports that projection. For one thing, some of our older attack submarines, first deployed in the 1940's, have themselves attained a 25–30 year age. In addition, no signs of unexpected wear have yet been detected on the oldest Polaris submarines now entering the second decade of their lives.

Finally, there are good reasons why ballistic missile submarines should have even longer lives than attack submarines and other naval ships. The nature of their mission is such that rigorous demands are seldom made upon them. Instead, they are driven quietly at slow speeds, and at relatively shallow depths. They have also been subject to extensive refit operations between each patrol and rigorous overhauls every five or six years to ensure that they remain in peak operating condition. Their crews are extensively trained and qualified and must meet the highest standards of any group in the Navy. The record of high Polaris reliability is well known.

Accordingly, we have every reason to believe that our existing submarines will attain the 25–30 year life predicted when they were first deployed. To the extent age is a factor, replacements will eventually be needed in the 1985–1990 time frame, but not until that time.

Administration Comments. The Administration, however, does not really base its case for ULMS on the existence of new ASW or ABM threats or on the age of existing submarines.

It makes no reference at all to an ABM threat, recognizing no doubt that even the threat used to justify Poseidon has never come to pass.

It does talk about ASW, but its comments are deservedly guarded. The Director of Defense Research and Engineering, Dr. John S. Foster, Jr., did note in testimony to the Senate Armed Services Committee, that "the Soviets have *expressed interest* (emphasis added) in developing a strategic ASW force that can effectively locate, identify, and destroy our Polaris force." And Admiral Moorer, Chairman of the Joint Chiefs of Staff, pointed out in his testimony to the Committee that "the Soviets *are believed* (emphasis added) to be working on a number of new ASW developments which could significantly improve their anti-submarine warfare capability." These are unusually weak statements for a threat analysis. And they are undercut further by Dr. Foster's direct admission to the Committee that "we cannot identify today any developments that indicate a Soviet threat to our sea-based missile deterrent."

Nor is the Administration arguing that our present submarines are on the verge of wearing out. It notes that they are getting older and that they will *eventually* have to be replaced. But nowhere is this eventual replacement need directly tied to the 1978 deployment date implicit in the accelerated ULMS development program.

In short, the Administration turns elsewhere to find its rationale for a major acceleration of ULMS.

III. The official rationale of ULMS: Soviet submarine expansion

Secretary of Defense Laird was quite candid about the main reason for an accelerated ULMS program in his recent posture statement to the Congress. Acceleration was required, he argued, not because of any inherent deficiencies in *our* existing sea-based forces, but in response to Soviet expansion of *their own* forces:

"The continuing Soviet strategic offensive force buildup, with its long term implications, convinced us that we need to undertake a major new strategic initiative. This step must signal to the Soviets and our allies that we have the will and the resources to maintain sufficient strategic forces in the face of a growing Soviet threat. It would be diplomatically and politically unacceptable for the U.S. to allow the Soviets to achieve a large numerical superiority in both land-based and sea-based strategic missiles . . . I have carefully reviewed all alternatives for newstrategic initatives and have decided that acceleration of the ULMS program is the most appropriate alternative, since the at sea portion of our sea-based strategic forces has the best long term prospect for high pre-launch survivability."

Laird noted in his posture statement that the Soviets have been expanding their own ballistic missile submarine fleet so rapidly that they may soon have more such submarines and more sea-based missiles than we do. He pointed out that they have already deployed 25 Yankee class submarines—rough equivalents to our own Polaris—and that another 17 are now under construction. By the end of calendar year 1973, he argued, the Soviets could have 42 Yankee submarines at sea, compared to a United States fleet of 41 ballistic missile submarines. And since Soviet submarines, like ours, carry sixteen missiles each, the Soviets would then lead, too, in numbers of sea-based missiles deployed, 672–656.

The purpose of ULMS acceleration was therefore two-fold; to dissuade the Soviets from continuing their buildup and to match it in the event it proceeded. Our purpose is to examine in detail the wisdom of this rationale.

The Concept of Parity Is Important. We have no quarrel with the suggestion that the size of Soviet forces is a matter of legitimate concern to the United States. In fact, we noted earlier our belief that a stable nuclear deterrence requires that neither side gain the ability to inflict considerably greater urban/industrial damage on the other. The reason is that the level of retaliatory damage needed to achieve deterrence is an inherently *subjective* judgment, which can best be given objective status through shared perceptions on both sides.

It is no doubt true that we and the Soviets already have more than enough weaponry to virtually obliterate each other. But as long as influential policy makers on both sides *believe* that additional buildups can produce

military and diplomatic advantages, it would not be conducive to a stable mutual deterrence if one side were to let go unchallenged a major buildup by the other. A stable mutual deterrence—and an arms accord looking to parity at reduced force levels—will not be achieved until the goal of superiority has been firmly rejected by both sides.

Parity, However, Can be a Two-edged Sword. While mutual acceptance of parity is essential if the arms race is to be controlled, parity is also a difficult concept to define, and too zealous a pursuit of all its indicia could easily fuel the arms race.

It is clear, for example, that not one factor, but many factors jointly, determine the ability of one country's strategic forces to inflict damage on another country. Considering only sea-based forces for a moment, numbers of submarines and missiles are important, but so are many other factors—missile range and accuracy, numbers and size of warheads, submarine survivability, the status of ABM defenses, and geographical considerations.

Absolute parity in all these regards cannot possibly be achieved. Even close approximations are made difficult by such factors as different historical starting points, lack of knowledge about each other's intentions, and the momentum of programs once begun.

Accordingly, there is grave danger that action taken in one country to maintain parity will be perceived elsewhere as evidence of other motives, and that the action taken in response will be similarly misperceived. Too zealous a pursuit of parity, in other words, can easily trigger a long series of actions and reactions which serve only to fuel the arms race.

The Administration and its spokesmen have recognized this danger, and they have sought to defuse it with their words. First, they have defined parity in terms of general damage level equivalence, not in terms of other narrower indicia. They have also stated that only a Soviet capability to cause *"considerably greater* urban/industrial destruction than the United States could inflict on the Soviets" is reasonable ground for concern.

We accept this formulation. We agree with the words of President Nixon in his recent foreign policy message to the Congress: "The capabilities of both the U.S. and USSR have reached a point where our programs need not be driven by fear of minor quantitative imbalances." Whether these precepts have been reasonably applied in the decision to accelerate ULMS development is the question to which we now turn.

The U.S.-Soviet Sea-based Balance. We believe that these precepts cannot be used to justify the Administration's accelerated ULMS program. In our view, ULMS acceleration seems "driven" by precisely that "fear of minor quantitative imbalances" which the Administration has rejected as a suitable basis for United States strategic defense policy.

To begin with, the present balance in land-based systems is not unfavorable to the United States. The Soviet lead in numbers of land-based missiles deployed—1,520 to 1,054 according to Secretary Laird's recent posture statement—is greatly offset by our own lead in numbers of strategic bombers—565 to 140 according to the same source. In addition, the United States has a significant lead at the present time in numbers of independently targetable land-based warheads due to the Minuteman III MIRV program and development of the SRAM missile for our bomber force. The Soviets, as Secretary Laird has noted, have not yet even tested a MIRV warhead, and they have no air-to-surface missiles with the capabilities of SRAM. Accordingly, an unfavorable balance in land-based systems cannot reasonably be cited to justify undue concern about the status of the sea-based balance.

As far as sea-based forces are concerned, it is true that the Soviets 18 months from now may have one more modern ballistic missile submarine with 16 more missiles deployed than we do. But this *very* "minor quantitative imbalance" will be more than offset by continued United States advantages of other kinds.

One such advantage will be the huge United States lead in independently targetable warhead numbers, an outgrowth of the Poseidon program. Since each Poseidon submarine will carry 160 independently targetable warheads, compared to 16 on each Yankee class submarine, it will take only five Poseidon submarines to more than match in warheads the total Yankee fleet. Yet we will have approximately 20 Poseidon submarines deployed 18 months from now at the end of 1973, together with about an equal number of uncovered Polaris submarines.

For a number of reasons, our submarines will also be significantly more secure than their Soviet counterparts from ASW techniques. First, our submarines themselves are of better quality; they have better sonar and more sophisticated navigational equipment and, above all, are significantly quieter. Second, the already longer range of our submarines' missiles—about 2,880 miles for the Polaris A–3 and Poseidon, compared to about 1,750 miles for the current Soviet Sawfly missile—will enable them to hide within range of their targets in a broader expanse of ocean area. In addition, geographical considerations will remain unfavorable to Soviet submarines; when leaving port, they will have to transit for much longer distances through narrow waters in which ASW equipment can be concentrated. Finally, they will be faced with the superior ASW techniques which the United States has developed and deployed.

It seems clear, then, that nothing will occur in the next 18 months to give the Soviet Union the capability to inflict "considerably greater" damage on the United States than it could inflict in return. Whatever net advantage there may be will continue to lie with the United States.

As far as longer term developments are concerned, two things should be said.

First, it is impossible to predict what additional improvements in their sea-based forces the Soviets may undertake or what success they will enjoy in their endeavors. They may seek to deploy considerably more than 42 ballistic missile submarines, or they may stop at or near that number. They may or may not seek to put in their submarines longer range missiles with independently targetable warheads to match the Poseidon program. The Administration has noted that the Soviets have been testing a new submarine-launched ballistic missile—the SS–NX–8—with an estimated range roughly equivalent to that of Poseidon. But the Administration, quite deservedly, has made no claims as to the capabilities of or Soviet hopes for that missile. To date no MIRV or MRV tests have been conducted with that missile, and doubts must remain both as to its compatibility with existing Soviet submarines and its long range potential as a Poseidon equivalent. Finally, the Soviets may attempt to supplement their Yankee fleet with submarines of a newer class, but there is as yet no evidence that they plan to do so.

Second, an accelerated ULMS program is clearly not required to protect long-term United States interests against this vague Soviet threat, as the examination of a worst-case analysis—which no one has even suggested to date—will show. Even if Soviet submarine construction continues, even if a successful MIRV test of the SS–NX–8 is conducted tomorrow, and even if action is then taken to put the SS–NX–8 in all Soviet ballistic missile submarines as a Poseidon equivalent, the United States lead in sea-based warheads will remain secure until 1980 at the very least. We already plan to have 5,120 warheads at sea by the end of 1976 when the Poseidon program is completed. The Soviets might be able to match this figure by 1980, but only if they proceeded more quickly than we did from the first successful test of their new missile to its deployment or if they converted their submarines at a more rapid pace than ours. If initial deployment occurred in late-1974 and six submarines were converted each year thereafter, it would not be until 1980 that the Soviets would have on station more than our 31 converted submarines. In the meantime, we could prolong our warhead lead simply by converting to a new missile system the 10 oldest Polaris boats not now programmed for Poseidon.

Under these circumstances, there is little danger of a serious tilt in the sea-based balance of strategic forces if we wait to see whether anything like this worst-case scenario materializes. If we do wait, we will be able to monitor all new Soviet ship construction 18–30 months before deployment. We will also be able to monitor any tests of MIRV technology on the SS–NX–8. And even if we moved forward *two years from now* on the accelerated ULMS time-table presently proposed, we could still look to ULMS deployment as early as 1980. It should not be forgotten in considering our option, that what the present Administration program entails is a *three-year* step-up in the earliest ULMS deployment previously considered, from 1981 to 1978. We could wait a good while yet and still beat the old timetable.

The Bargaining Chip Implications of ULMS. It is far from clear that an accelerated ULMS program at this time would have the effect the Administration hopes. The Soviets to date have shown little interest in the negotiation at SALT of sea-based force limitations. An accelerated ULMS program might facilitate such negotiations, but it much more likely would not.

The history of the SALT talks to date shows that both sides have proceeded cautiously, protecting their national interest and avoiding any steps that might lock them into even a short-term disadvantage. The Soviets have continued a numerical buildup in both their land-based and sea-based missile forces, and the United States has moved forward with its Safeguard ABM system and the introduction of MIRVed warheads to its existing missile force. If the Soviets perceived an accelerated ULMS proposal as a threat to their own chances of attaining parity with the United States in sea-based forces, it is unlikely that they would respond by foregoing programs already planned.

And an accelerated ULMS program might well be perceived as such a threat by the Soviets. Look at the situation for a moment from a possible Soviet perspective. The Soviets have been responding in recent years to a series of earlier United States initiatives. They are fast pulling even with the United States in numbers of submarines and missiles deployed, yet they are still far behind in other areas—in numbers of warheads, in submarine quietness, in missile range, etc. The ULMS initiative at this juncture could have several implications.

First, it could pose a threat over the longer term to the Soviets' almost acquired parity in numbers of submarines and missiles. It is doubtful, however, that this would be the Soviets' main concern, since this threat could be easily offset by a continuation of their present buildup or eliminated altogether by agreeing to the kind of numerical limitations on submarines and missiles which have been discussed at SALT.

But an accelerated ULMS program would pose more than a simple numerical threat to the Soviet Union. If pursued, it could lead to greater United States advantages than now exist in other areas. Some of our

submarines, for example, would have more missiles and warheads each than could *ever* be placed in the Soviets' Yankee class submarines. And these advantages would be gained if the program were pursued now at a time when the Soviets had not yet demonstrated through successful MIRV tests an ability to match demonstrated through successful MIRV tests an ability to match existing United States capabilities.

These Soviet concerns would not necessarily be eliminated by the negotiation of numerical limitations on submarine and sea-based missile forces, since these limitations would not by themselves preclude the accelerated development of ULMS. Unless arrangements to the contrary were made, an accelerated ULMS program could easily proceed under the context of these limitations, as a replacement rather than a supplement to the existing Poseidon force.

The Administration has been less than candid as to its own intentions in this regard. On the one hand, it has justified accelerated ULMS development as a needed signal to the Soviets of United States concern over the Soviet submarine buildup, thus implying that ULMS is somehow bargainable. On the other hand, it has stressed the fact that ULMS will eventually be needed anyhow, thus implying that little change in the present timetable might follow from progress at SALT.

Under these circumstances, the Soviets might reasonably look askance at United States calls for numerical limitations at SALT. They might well question the wisdom of agreeing to restraint in the one area where they can begin to match the United States, while simultaneously allowing the United States to proceed in other areas where it already enjoyed advantages.

We are deeply concerned by the likelihood of this development. In our view, an accelerated ULMS program is not required at this time to protect our national interest. And if pursued, we believe it would be as likely to stimulate as to curb the arms race.

A Sensible Position on ULMS for SALT. We believe that a responsible United States bargaining position on ULMS must meet three objectives. First, it must clearly protect the security interests of the United States in the event negotiations fail. Second, it must be reasonably calculated to assure the Soviet Union that its own security objectives can be attained through successful negotiations. And third, it must be designed to provide sufficient time for fruitful negotiations to take place. These objectives would be met, in our view, if the following steps are taken.

First, we should proceed now with development of a new long-range missile system. Such development work would provide ample evidence to the Soviets of our determination to protect our sea-based nuclear deterrent.

Second, the President should make clear the willingness of the United States to forego during fiscal year 1973 any major increase in expenditures for the development or production of a new submarine system, in return only for Soviet agreement to serious negotiations at SALT on the subject of sea-based force limitations. It is our belief that the President should be able to obtain such a commitment from the Soviets during his Moscow trip in May, at which time an interim SALT agreement—restricting ABMs and land-based missiles only—is widely expected to be signed.

Third, the United States should make clear that its continued restraint during subsequent negotiations will be directly dependent on the restraint exercised by the Soviets themselves. In our opinion, such restraint will be shown if both sides forego major additional ballistic missile submarine construction activities and confine their efforts to improvements in the capabilities of their existing submarine fleets. If such restraint is exercized—and there are no developments threatening the survivability of existing sea-based forces—there should be ample time for negotiations to proceed without simultaneous submarine buildups on either side.

Such an approach, we feel, would fully protect *all* our interests at SALT. We should not allow Soviet expenditure of $100 million on a 42nd ballistic missile submarine to propel us into a $30 billion investment on ULMS and the world into a new sea-based arms race.

IV. *Additional reasons for going slow on ULMS*

An accelerated ULMS program is not required to protect our interests while the SALT talks continue and indeed could jeopardize those talks. But there are other reasons, too, why we should proceed slowly with ULMS at this time.

The Proposed Accelerated Program is Inconsistent with Sound Procurement Policy. Recent aircraft programs such as the C–5A and the F–14 have shown the dangers involved in overly ambitious development and production schedules. There are differences, to be sure, between aircraft and submarine development programs. Prototype submarines are not developed and tested first, after which they are turned out in large quantities on an assembly line basis. Instead, each submarine is very much a unique creation, and each is earmarked for production. There are several respects, however, in which the same kind of program management considerations which apply to aircraft programs apply to submarines as well.

First, many submarine subsystems are subject to the typical development-production cycle normally associated with aircraft programs. The missile subsystems are an obvious case in point, and the same considerations apply to navigational equipment, launch systems, and flight control systems as well. An accelerated schedule for ULMS would increase the risk of otherwise avoidable concurrency in the development and production of these subsystems.

Second, an accelerated schedule for ULMS would also necessitate illogical phasing between work on these subsystems and work on the submarine itslef. To cite just one example, work on the submarine is now programmed to proceed so rapidly that we will be locked into specific size constraints for the second generation ULMS 2 missile before the first generation ULMS 1 missile has even flown for the first time.

Perhaps most important, any compressed development schedule means that more work has to be done in a shorter period of time. This increases the danger of mistakes being made and makes corrective action more difficult without disrupting the overall program timetable. Accordingly, a choice has to be made at the outset between running these risks or eliminating certain programmed work from the project. Often an attempt is made to retain all design objectives for awhile, but some later drop by the wayside. Such could be the fate, for example, of several improvements now counted on to reduce ULMS's detectability.

The history of overly ambitious development programs has a clear lesson to tell. Almost invariably such programs lead to higher than anticipated modification costs before new systems are debugged. They also lead to schedule slippages, such that a program's accelerated features evaporate before its completion.

There is no reason to believe that ULMS would not be subject to similar pitfalls if pursued on an accelerated schedule. The major distinction to be expected is that our mistakes would cost us more because of the overall magnitude of the program. Since there is no need to accelerate work on ULMS, it makes no sense to run this risk.

More Time is Needed to Review the Merits of Alternative ULMS Designs. Even if developments at SALT are such that we feel compelled to move ahead with a new submarine construction program one year from now, there is much to be gained by having that much additional time to review the merits of alternative submarine designs. While alternatives have been explored ever since the inception of the ULMS program in 1969, no final decisions were made by the Navy until ULMS acceleration was ordered in January, and many important details are still being worked out. Accordingly, neither the Defense Department nor the Congress have had much opportunity to exercise design review. Such review, however, may be very badly needed.

It seems clear, for example, that the Navy is designing ULMS to have a top speed several knots faster than our existing Polaris submarines. The case for a higher speed has not been made, and any attempt to attain it is certain to have some adverse side effects.

The Navy will no doubt argue that increased speed is necessary, since increased speed will always make it easier to break contact with trailing Soviet attack submarines, many of which are already faster than our Polaris submarines. This argument, however, deserves further examination.

It should be noted, first, that speed is much more central to the mission of an attack submarine than it is to the mission of a ballistic missile submarine. The primary objective of the latter is to avoid detection in the first place, not to break trail after detection has occurred. Accordingly, we have always placed more emphasis in our ballistic missile submarine programs on quietness than we have on speed. Soviet Yankee class submarines, by contrast, have been faster but much noisier than Polaris (especially when driven at their faster speeds) and considerably more easy to detect. Only in our attack submarine programs has speed to date been made a key objective. Since the purpose of attack submarines is to seek out enemy shipping and destroy it, there is arguably some need to give them speeds as fast as most surface ships. Many experts have argued, however, that our attack submarines themselves should rely more on stealth and less on speed.

It should also be remembered that there are simple technical reasons why it will always be possible to build attack submarines faster than any ballistic missile submarines afloat. In a gross sense, the most important difference between the two kinds of submarines lies in the fact that the ballistic missile submarine has a middle section, which the attack submarine lacks, in which its missiles are stored. The presence of this missile section increases submarine size and in turn imposes an obvious restraint on speeds which could otherwise be achieved. In fact, event if ULMS is given the increased speed which the Navy seeks, it will still be substantially slower than existing and projected Soviet attack submarines.

Accordingly, the Navy should logically be required to demonstrate two things to justify its increased speed requirement. First, it should be required to show that the marginal reduction in the still remaining speed advantage of Soviet attack submarines has a clear-cut military significance. And second, it should be required to show that the original advantage could not be regained in a new Soviet attack submarine program. The first point has not yet been demonstrated, and the second cannot be shown.

The merits of increased speed would be a much less important issue of increased speed could be obtained without adverse side effects. Unfortunately, the speed now sought will necessitate a much larger submarine than would otherwise be required.

Several factors have had a major influence on the size of alternative ULMS designs, but the two most important have been the proposed length of the missiles to be carried and the proposed size of the new

submarine's nuclear propulsion system. (Both factors have an obvious effect on the needed hull diameter, since both have to fit inside, and the hull diameter in turn drives the overall size of the vessel at a rate proportionate to the size of the hull radius squared). Missile range is the main determinant of missile length, and the speed desired determines power plant size.

A submarine slightly larger in hull diameter than our current Polaris submarines would be required simply to accommodate the 6,000 mile range ULMS 2 missile. The increased size required would be much less, however, if this were its main determinant, a point attested to in part by Navy plans to incorporate the 4,500 mile range ULMS 1 missile in our existing submarines. In fact, the size of an ULMS submarine which could carry 20 to 24 missiles of 6,000 miles range would probably be 13,000 to 14,000 tons, compared to 8,000 tons for the largest of our current submarines. The Navy's present speed objective, however, and the size of the power plant needed to attain it have now pushed the size of the proposed ULMS design into the 17,000 to 18,000 ton range, more than twice the size of current submarines.

Several consequences would follow from any attempt to build a submarine that size.

One such consequence would be a notable increase in a whole range of program costs—propulsion costs, submarine construction costs, operating costs, and costs of new port facilities. According to some informed sources, the net effect could be at least 20 percent higher 10-year systems costs than those which might be incurred in building a new submarine with more and larger missiles, but no faster speed, than our present submarines.

A second consequence would be increased time per ship and slower construction rates. These factors—and the high costs per ship—could have an obvious impact on our ability to match the pace of new Soviet submarine construction.

Finally, such a larger submarine would be more susceptible than a smaller one to some ASW techniques. Active sonar equipment, for example, is more effective the larger the target, and the same may be true for new nonacoustic detection techniques, which we and presumably the Soviets are now trying to develop. High costs could further compound the ASW risks by limiting the total size of our fleet.

For all these reasons, a hard look at the Navy's present speed objective seems very much in order. Other design objectives, too, should be very carefully checked. A 6,000 mile range ULMS 2 missile would offer definite advantages over the 4,500 mile ULMS 1, but their precise significance should be pinned down. As noted earlier, every dramatic cost savings might be achieved if both speed *and* missile range could be scaled down. A design review might show that any new submarine construction we undertake in the near future should be based on a design much more similar than the present ULMS to the design of our present fleet. But unless we go slow with ULMS this year, we may find ourselves wholly committed to the existing design before a review can be made.

The Funding Implications. For all these reasons, we believe that the ULMS program should not be accelerated at the present time. Approximately $650 million of this year's request for $977 million (including the fiscal year 1972 supplemental) is earmarked for work on the new submarine itself and its non-missile subsystems. We believe that $600 million of this amount should be disallowed and that fiscal year 1973 funding for non-missile-related work should be held at the $50 million level. Such actions would provide for a slight increase from the roughly $40 million available for non-missile-related work in fiscal year 1972 ULMS funding. This amount should be more than adequate to continue Navy design studies and preliminary development work.

In allocating these funds to specific uses, the Navy, in our view, should be guided by two objectives. First, it should seek to reduce to the greatest extent possible the risk of cost growth and schedule slippage which would be inherent in a decision to greatly accelerate the pace of ULMS development in fiscal year 1974. Second, it should minimize the greatest extent possible the risk of premature commitment to a particular ULMS design. Major development expenditures on a new propulsion plant, especially, should be avoided at this time.

V. The modernization and replacement problem: the role of a long-range missile

Even if negotiations proceed well at SALT and no new submarine construction is needed to match a continued Soviet submarine buildup, it will still be necessary to modernize and eventually replace our present sea-based missile force.

The Navy will no doubt seek to meet this need by pushing for development of a new ULMS submarine system as fast as the Defense Department and the Congress will allow.

Admittedly, a new submarine system would offer more in the way of prestige than continued improvements in our present fleet. It cannot be justified, however, in terms of the advanced physical age of that fleet. As noted earlier, *none* of our current ballistic missile submarines will reach 25–30 years of age until 1985–1990 time period. Moreover, we believe that a new submarine system would not offer significantly greater operational capabilities than those which could be obtained for some time to come by appropriate modifications to our present fleet.

ULMS Would Have Advantages. There is no doubt that a new submarine system such as ULMS could be superior in several ways to our present sea-based missile force.

First, the new submarines could be significantly more survivable than our present Polaris submarines. It could be designed for quieter operation, and it could be given a new long-range missile system which would greatly expand the ocean area in which it could hide while remaining in range of its targets. These two steps would greatly complicate the ASW problem facing the Soviets. They would reduce detectability by acoustic sensors and make much more difficult the concentrated deployment of such sensors in all submarine operating areas.

Second, the new submarine could present a tougher ABM problem for the Soviet Union. Its missiles could be given new maneuvering re-entry which (MARVs) designed to dodge Soviet defensive missiles. In addition, its longer range missiles would enable it to provide deterrent coverage over the entire defense perimeter of the Soviet Union. By contrast, our present submarines are much more limited in the geographical areas from which they can obtain effective target coverage.

Finally, the new submarine could provide better on-station availability. Due to the limited range missiles in our current submarines, a significant portion of their time at sea must be spent in transit to their patrol areas, and they must depend heavily on overseas basing. The on-station availability of a new submarine could be enhanced, moreover, not only by its longer range missiles but also by the lower maintenance times which its modular construction and integrated systems design would permit.

That a new submarine system could provide significant improvements in the capabilities of our current fleet is not disputed. But it is not enough for the Navy to cite these possible improvements as reasons for building ULMS. The Navy must show also that the same improvements cannot be obtained through modifications to the existing fleet. And this the Navy has not yet done.

The Fleet Modernization Alternative. Many of the improvements just referred to are dependent not on the construction of a new submarine, but on the capabilities which new long-range missiles themselves would provide. In fact, new long-range missiles would provide improvements in each of the areas mentioned. They would increase submarine survivability, compound the problems of ABM defense, and increase submarine time on-station. This fact has been well attested to in testimony of Defense Department spokesmen to Congress earlier this year. Dr. Foster noted as much in speaking to the Senate Armed Services Committee about the capabilities of the Navy's proposed ULMS 1 missile:

"When our current SSBNs are armed with this more capable missile, the ocean area from which they can launch their missiles will be significantly increased, with no sacrifice in payload. This enlargement of an area in which the Soviets must expand their strategic ASW efforts degrades the effectiveness of any ASW of the kind they now appear to engage in. Consequently, we expect that, with this new missile, the current submarine missile system will remain invulnerable. Moreover, the longer range ULMS–1 missile will offer the option of CONUS basing with minimum sacrifice in deterrent posture."

Modifications of our present submarines themselves could also proceed concurrent with work on a new long-range missile system. We have been making such improvements ever since these submarines were introduced. As Admiral Zumwalt noted in his recent testimony to the Senate Armed Services Committee:

"Concurrent submarine improvements have included reduction of detectable noise levels, better passive and active sonars, and improved navigational equipment. This orderly, upgrading process has paid off and the logic for it remains valid today."

We wholeheartedly agree. As far as detectable noise is concerned, our current submarines are already 5–10 decibels (db's) quieter than when they were introduced, and there is no reason why a gradual quieting program should not continue to be successful. It is true that the natural circulation reactor now programmed for ULMS cannot be incorporated in our current submarines, but similar noise reduction could be obtained by incorporating equipment such as the variable speed pumps and multi-vein impellers which the Navy is now developing.

It should also be possible to reduce maintenance requirements affecting the on-station availability of our current submarines. The Navy is now installing in those submarines new long-life reactor cores. While older cores have had to be replaced every 5–6 years—thus setting a clear outside limit on the time between submarine overhauls—the new cores will have a 10 year service life. The Navy is now investigating several promising ways to extend the time between overhauls to take advantage of these long-life cores. Our current submarines are now on station 55–60 percent of the time. With long-range missiles aboard and increased time between overhauls, they should be able to come much closer to the 65–70 percent on-station availability rate which a new ULMS submarine realistically might provide.

Modifications to our existing sea-based missile force should be able, then, to provide almost the same improved capabilities as brand new submarines would provide. Under these circumstances, we believe that money spent for new submarine replacements would be money wasted at the present time.

The Unpredictable Nature of the Future ASW Threat. Money spent now might be money wasted for another reason as well. While our current submarines are secure today from Soviet ASW techniques—and while they could be made more so by an

appropriate modernization program—we know very little about the long-term nature of the ASW threat.

We do know that a submarine moving through the ocean environment leaves various indicators of its presence. Sound is only one of these indicators. The presence of a mass of metal, such as a submarine, distorts the earth's magnetic field. The temperature of a submarine, especially a nuclear submarine with its hot nuclear reactor discharge, differs from the temperature of the surrounding water. And the passage of a submarine through water creates hydrodynamic pressure.

Until now, only acoustic techniques have been of major utility in submarine detection. But other signals are also there. What is needed is now technology to dig them out and process them. What form this technology will take—and what steps will be required to counter it—is not known at the present time.

There is a danger, therefore, that any new submarines we build today could be rendered obsolete in much the same way and at much the same time as the submarines we now have. It is quite possible that we could invest $30 billion in the ULMS program over the next 10–15 years, expecting it to protect us until the year 2000, only to find that it might be rendered obsolete by 1990 and that a new submarine development program was needed in the early 1980s to offset this possibility, almost as soon as ULMS was sent to sea.

A Well-Phased Replacement Program. This does not mean that we should simply sit back, wait for a new ASW threat to develop, and then counter it when it does. We have no guarantee that it will burst upon us in a dramatic breakthrough or that such a breakthrough, if it occurs, will coincide with the physical obsolescence of our current submarines.

We should be able, however, to devise a well-phased modernization and replacement program which will minimize potentially wasteful expenditures yet keep us equipped at all times with a highly secure sea-based deterrent. We believe that the following course of action would provide us with such a program.

First, Congress should approve the Navy's request for approximately $330 million in fiscal year 1973 ULMS 1 missile development funds. Development of the ULMS 1 missile—together with other modifications to our current submarines on which the Navy is working—will significantly enhance the survivability of our present fleet against all foreseeable threats. If development of this new missile proceeds at the presently projected rate, it should be available for initial deployment by 1976. In the absence of any major change in the ASW threat, it should remain an integral part of our sea-based deterrent well into the 1990s.

Second, the Navy should accord high priority to its current "SSBN Defense" program. This program, the funding for which is projected to increase from $12.2 to $20.4 million in fiscal year 1973, is designed to identify and develop suitable counters to new ASW techniques which could jeopardize our Polaris fleet. The knowledge gained from this program should be used to make future reductions in the detectability of that fleet. It should also be used as a source of ideas for new submarine designs.

Third, the Navy timetable for a new submarine contruction program should be determined both by changes in the ASW threat and the eventual need to replace our current submarines. Such a program should be undertaken in sufficient time to meet any changes in the ASW threat which have been identified and which cannot be countered by modifications to our Polaris fleet. Unless such threat changes have been identified, it should not be necessary to move beyond the study and design phase of the ULMS program until fiscal year 1976 or later. That starting date would provide ample time for the gradual development of a new submarine system. Even if development time were stretched from the roughly six years implicit in the Administration's present timetable to as much as 10 years, the first new submarine would still be available for deployment in 1985, at which time the oldest of our current submarines would be 25 years of age. It would then be possible—with a construction rate as low as two or three submarines per year thereafter—to replace all our current submarines inside their projected 30 year lives.

We believe that this timetable, either the development or production phases of which could be speeded up if the threat required, makes much more sense than the commitment now of vast sums to a new submarine system of unknown long-term value.

ASW Talks at SALT. The most pressing need at SALT right now is the negotiation of restrictions on ABM systems and the size of strategic offensive forces. These issues themselves have caused difficulties enough, and a continued failure to resolve them—coupled with a continued Soviet submarine buildup—could force us much sooner than would otherwise be desirable into a new submarine construction program.

As soon as possible, however, the issue of restrictions on strategic ASW operations should be placed high on the SALT agenda. Our sea-based missile submarines are secure today, and it should be possible to keep them so well into the future. At the same time, the possibility of a new ASW breakthrough—one which cannot be countered by any new submarine design—cannot be dismissed out of hand. The occurrence of such a breakthrough coupled with the already increasing vulnerability of all land-based systems, would dramatically undermine the present stability of the nuclear balance.

We recognize that restrictions on ASW research itself may not be feasible, since there may be no way that compliance could be verified. Neither we nor the Soviets have much choice, therefore but to pursue strategic ASW research—with the purpose of ensuring the survivability of our own sea-based deterrent, but with the danger that the knowledge gained could be used for counter-force purposes.

It should not be impossible, however, to work out verifiable restrictions on the actual deployment of new ASW systems or even on the use of such systems when deployed. A numerical limitation on attack submarine force levels and the establishment of trailing norms are two promising possibilities.

The long-range prospects for a stable mutual deterrence may well depend on the continued survivability of sea-based deterrent forces. Accordingly, much more attention should be directed in the future to this ASW problem.

THIRD PART OF REPORT OF COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Mr. PACKWOOD. Mr. President, on March 23, I placed in the RECORD a detailed summary of the first two parts of the report of the Commission on Population Growth and the American Future and a statement by the Commission's distinguished Chairman, John D. Rockefeller III.

The third part has now also been released, containing additional commentary and recommendations. I ask unanimous consent that a similar summary be printed in the RECORD for this part, along with the Chairman's statement.

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

THIRD PART OF REPORT OF COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

WASHINGTON.—The Commission on Population Growth and the American Future today submitted to President Nixon and Congress Part III of its Final Report, containing recommendations on immigration, internal migration and urban development and research on population.

The recommendations are designed to "facilitate and guide the process of population movement, to further the development of knowledge about population dynamics, and to assist in the development and implementation of policy," the Commission said.

The 24-member panel headed by John D. Rockefeller 3rd completed a two-year Presidential and Congressional assignment with the submission of Part III. Parts I and II were released earlier in March.

The Commission was established to conduct an inquiry into the probable course of population growth and internal migration, to assess the problems this will pose, and to make recommendations on how the nation can best resolve those problems.

Part I focused on the consequences of growth and distribution for government services, the economy, the environment and natural resources.

Part II contained policy recommendations on childcare, contraceptive information and services, fertility-related services and educational programs.

The Commission also released separately a 16-page booklet containing themes and highlights of the entire report, as well as a summary of all the major policy recommendations.

The Population Commission was proposed by President Nixon in a special message to Congress in July, 1969, when he said that "One of the most serious challenges to human destiny in the last third of this century will be the growth of the population."

The President added that, "Whether man's response to that challenge will be a cause for pride or for despair in the year 2000 will depend very much on what we do today."

Congress subsequently established the Commission in March, 1970, and assigned it to examine:

The probable course of population growth, internal migration and related demographic developments between now and the year 2000.

The resources in the public sector of the economy that will be required to deal with anticipated population growth.

Ways in which population growth may affect the activities of Federal, State and local government.

The impact of population growth on environmental pollution and on the depletion of natural resources.

The various means appropriate to the ethical values and principles of this society by which our Nation can achieve a population level properly suited for its environmental, natural resources, and other needs.

Membership of the Commission included Congressmen, Senators, civic, business and labor leaders, physicians, scientists students and housewives.

More than 100 experts on economic, environmental governmental and social problems participated in the Commission's research program, and an additional 100 witnesses submitted testimony at public hearings in Washington, D.C., Los Angeles, Little Rock, Chicago and New York.

Highlights of the recommendations in Part III follow:

HIGHLIGHTS

Population stabilization

Stabilization of our population would contribute significantly to the nation's ability to solve its problems. Moving toward stabilization would provide an opportunity to devote resources to problems and needs relating to the quality of life rather than its quantity. Stabilization would "buy time" by slowing the pace at which growth-related problems for the orderly and democratic working out of solutions.

The Commission recognizes that the demographic implications of most of our recommended policies concerning child-bearing are quite consistent with a goal of population stabilization. In this sense, achievement of population stabilization would be primarily the result of measures aimed at creating conditions in which individuals, regardless of sex, age, or minority status, can exercise genuine free choice. This means that we must strive to eliminate those social barriers, laws, and cultural pressures that interfere with the exercise of free choice and that governmental programs in the future must be sensitized to demographic effects.

Recognizing that our population cannot grow indefinitely, and appreciating the advantages of moving now toward the stabilization of population, the Commission recommends that the nation welcome and plan for a stabilization population.

Immigration

Immigrants are now entering the United States at a rate of almost 400,000 per year. The relative importance of immigration as a component of population growth has increased significantly as declining birthrates diminish the level of natural increase. Between 1960 and 1970, about 16 percent of the total population growth was due to net immigration (the difference between the number of people entering the country and the number leaving). However, the increasing relative significance of immigration can be misleading for, if native births and deaths were balanced, immigration would account for 100 percent of population growth.

If net immigration were to remain at about 400,000 per year and all families were to have an average of two children, then immigrants arriving between 1970 and the year 2000, plus their descendants born here, would account for almost a quarter of the total population increase during that period.

If immigration were to continue at the rate of about 400,000 per year, a rate of 2.0 rather than 2.1 children per woman would eventually stabilize the population, though at a later date. And the size of the population would ultimately be about eight percent larger than if there were no international migration whatsoever.

A major and growing problem associated with immigration is that of illegal immigrants. It is impossible to estimate precisely how many escape detection; but, during 1971, over 420,000 deportable aliens were located. This figure is larger than the number of immigrants who entered legally during the same period. Estimates place the number of illegal aliens currently in the United States between one and two million. Most are men seeking employment. Because the number of illegal aliens apprehended has risen dramatically (from less than 71,000 in 1960 to over 400,000 in 1971), the number of aliens in illegal status has probably been increasing significantly.

The economic problems exacerbated by illegal aliens are manifold and affect the labor market and social services. It is often profitable for employers to hire illegal aliens for low wages and under poor working conditions; these workers will not risk discovery of their unlawful status by complaining or organizing. Thus, illegal aliens (who usually take unskilled or low-skilled positions) not only deprive citizens and permanent resident aliens of jobs, but also depress the wage scale and working conditions in areas where they are heavily concentrated. Because of the illegal and precarious nature of their status, these aliens are ready prey for unscrupulous lawyers, landlords, and employers.

Eight out of 10 illegal aliens found are Mexicans. Most of the others are Canadians and West Indians, although there are also sizeable groups of Portuguese, Greeks, Italians, Chinese, and Filipinos. Their countries were affected by immigration policy changes in the 1965 Act, and there is considerable demand and pressure for immigrant visas. The flow of illegal immigrants could probably be reduced if the numbers of permanent residence visas were increased, the economic incentives for hiring illegal aliens were eliminated, and/or the economic advantages of obtaining a job in this country were reduced. In any case, an aggressive enforcement program must be developed along all borders and ports of entry. Any enforcement programs against illegal entry and possible laws against employment of illegal aliens must take special care not to infringe upon the civil rights of Mexicans, Mexican-Americans, and others who are legally residing here and working or seeking work.

In addition to the adverse economic pressures caused by illegal aliens, it is possible that legal immigration could have a negative impact if not regulated carefully.

A flow of highly trained immigrants can mask the need for developing and promoting domestic talents—for example, in the medical field. Although medical schools have recently been expanding enrollments, a significant proportion of the demand for doctors is being met by immigrants trained abroad. It appears that, without the availability of these foreign doctors, the medical schools would be under greater pressure to increase their enrollment and to provide more educational opportunities for all Americans—particularly minorities and women. The fact that there are more registered Filipino doctors (over 7,000) than black doctors (about 6,000) practicing in the United States shows the inequities that can arise.

It is imperative for this country to address itself, first, to the problems of its own disadvantaged and poor. The flow of immigrants should be closely regulated until this country can provide adequate social and economic opportunities for all its present members, particularly those traditionally discriminated against because of race, ethnicity, or sex.

In order for Congress and immigration officials to consider these economic problems, apply appropriate regulations, and expect the economic conflicts to be alleviated, they must also eliminate the flow of illegal immigrants.

The Commission recommends that Congress immediately consider the serious situation of illegal immigration and pass legislation which will impose civil and criminal sanctions on employers of illegal border-crossers or aliens in an immigration status in which employment is not authorized.

Because the immigration issue involves complex moral, economic, and political considerations, as well as demographic concerns, there was a division of opinion within the Commission about policies regarding the number of immigrants. Some Commissioners felt that the number of immigrants should be gradually decreased, about 10 percent a year for five years. This group was concerned with the inconsistency of planning for population stabilization for our country and at the same time accepting large numbers of immigrants each year. They were concerned that the filling of many jobs in this country each year by immigrants would have an increasingly unfavorable impact on our own disadvantaged, particularly when unemployment is substantial. Finally, they were concerned because they believe that immigration does have a considerable impact on United States population growth, thus making the stabilization objective much more difficult.

The majority felt that the present level of immigration should be maintained because of humanitarian aspects mentioned previously; because of the contribution which immigrants have made and continue to make to our society; and because of the importance of the role of the United States in international migration.

The Commission recommends that immigration levels not be increased and that immigration policy be reviewed periodically to reflect demographic conditions and considerations.

The meaning of a metropolitan future

The United States today is experiencing three important shifts in population: (1) migration from low-income, rural, and economically depressed areas toward metropolitan areas; (2) a movement of metropolitan population from older, and often somewhat climatically less hospitable centers in the northeast and midwest, toward the newer climatically favored centers of the south and west; and (3) an outward dispersion of residents from the cores to the peripheries of the metropolitan areas. The combination of these population movements and the continuing increase in our total population has resulted in the development of large metropolitan areas and urban regions—indeed, the emergence of an almost totally urban society.

The Commission recommends that:

The federal government develop a set of national population distribution guidelines to serve as a framework for regional, state, and local plans and development.

Regional, state, and metropolitan-wide governmental authorities, to conduct needed comprehensive planning and action programs to achieve a higher quality of urban development.

The process of population movement be eased and guided in order to improve access to opportunities now restricted by physical remoteness, immobility, and inadequate skills, information, and experience.

Action be taker to increase freedom of choice of residential location through the elimination of current patterns of racial and economic segregation and their attendant injustices.

Accommodating future national growth, then, is primarily a job of accommodating future suburban growth and of sensibly guiding the transformation of currently rural territory to urban uses as metropolitan areas physically expand. How the character and form of the next generation of suburbs develops will play a large role in determining the quality of life of the vast numbers of Americans living in these areas across the country. The territory of urban regions is expected to double between 1960 and 1980, and to grow at a slower rate after that. This means that the land we occupy in the year 2000 is largely being settled now. If we settle it badly now, we shall endure the consequences then.

Local governments should broaden their interests and responsibilities beyond local parochial concerns and be responsive to metropolitan and regional objectives. Where necessary, the power of planning and implementation will have to be transferred to a regional or metropolitan-wide authority or government. The logical level from which to guide urban growth is the regional or metropolitan scale.

The increased complexity and scale make the continued fragmentary approaches to metropolitan planning and development progressively more costly and wasteful. This suggests that the basic responsibilities for planning settlement patterns, new public facilities, and public services should be at the metropolitan level. To encourage this comprehensive approach and local cooperation, the major portion of federal funds to support planning activities in metropolitan areas should go to the appropriate multi-purpose area-wide planning agency. These agen-

cies, in turn, can support planning efforts for individual jurisdictions within the metropolitan area.

To anticipate and guide future urban growth, the Commission recommends comprehensive land-use and public-facility planning on an overall metropolitan and regional scale.

The quality of life in an urban area depends largely on how its land is used—the location and character of housing, the amount and accessibility of open space, the compatibility of adjacent land uses, the transportation system. Land-use regulations, principally zoning and subdivision regulations, are the chief government tools to influence local land-use patterns and the character of development.

The Commission recommends that governments exercise greater control over land-use planning and development.

This could be achieved through: (1) early public acquisition of land in the path of future development to be used subsequently as part of a transportation system or for open space; (2) establishment of taxes and easements to influence the use of land and timing of development; (3) establishment of a state zoning function to oversee the use of the land; (4) establishment of special zoning to control the development of land bordering public facilities such as highways and airports.

Four years ago the Commission on Civil Disorders said: "Our nation is moving toward two societies, one black, one white—separate and unequal." It added that "white society is deeply implicated in the ghetto." In the intervening years, little if any progress has been made to diminish the isolation of the disadvantaged.

To help dissolve the territorial basis of racial polarization, the Commission recommends vigorous and concerted steps to promote free choice of housing within metropolitan areas.

Even without further legislation, federal agencies could do much to promote housing integration simply by changing administrative practices. This would require that the federal government become more alert to local housing practices and establish an active program to guarantee local compliance with housing laws. An additional means for pursuing these objectives might be the establishment of institutions which could buy housing in white suburbs and subsequently rent or sell them to ethnic and racial minorities.

To reduce restrictions on the entry of low and moderate-income people to the suburbs, the Commission recommends that federal and state governments ensure provision of more suburban housing of low- and moderate-income families.

We must distinguish sharply the long-run national policy of eliminating the ghetto from a short-run need to make the ghetto a more satisfactory place to live. Improving conditions in the ghetto does not constitute an acceptable long-run solution to the racial discrimination which created the ghetto. But if we wait for the long-run solution, we shall bypass the present need for better schools, housing, public transportation, recreational facilities, parks and shopping facilities.

These needs are partly a function of fragmentation of local government within metropolitan areas which produces serious imbalances between the demands on government and the resources available to meet them. These imbalances arise in large part because local public services depend so heavily on locally raised revenues produced by locally applied taxes (principally, of course, the property tax). The present situation invites, in fact encourages, racial and income segregation between local communities—the flight of the well-to-do from high-cost, poor-service cities to enclaves of affluence guarded by exclusionary zoning.

To promote a more racially and economically integrated society, the Commission recommends that actions be taken to reduce the dependence of local jurisdictions, on locally collected property taxes.

Redistribution has left behind undereducated, under-skilled persons in locales that have fallen into economic and social decline. This is not to suggest that all rural places are suffering from population decline and economic obsolescence. On the contrary, many small communities are viable and prosperous. But the economic development of the United States can be traced through the impact it has had on the distribution of population in this country.

In chronically depressed areas, it may sometimes be true that the prudent course is to make the process of decline more orderly and less costly—for those who decide to remain in such areas as well as for those who leave. This would hold true if economic analysis discloses that no reasonable amount of future investment could forestall the necessity for population decline as an adjustment to the decline in job opportunities. In that event, the purpose of future investment in such areas should be to make the decline easier to bear rather than to reverse it.

To improve the quality and mobility potential of individuals, the Commission recommends that future programs for declining and chronically depressed rural areas emphasize human resource development.

To enhance the effectiveness of migration, the Commission recommends that programs be developed to provide worker-relocation counseling and assistance to enable an individual to relocate with a minimum of risk and disruption.

To promote the expansion of job opportunities in urban places located within or near declining areas and having a demonstrated potential for future growth, the Commission recommends the development of a growth center strategy.

This strategy could be reinforced by assisted migration programs that would encourage relocation to growth centers as an alternative to the traditional paths to big cities. Growth centers could also provide many of those who are unemployed and underemployed in declining areas with an opportunity to commute to new or better jobs. In such circumstances, more effective employment could be achieved without altering the living environment. Equally important, such growth centers would provide alternative destinations for urban migrants preferring small town or city living.

The types of growth centers envisioned are expanding cities in the 25,000 to 350,000 population range whose anticipated growth may bring them to 50,000 to 500,000. Somewhat lower and higher limits should be considered for the sake of flexibility. Not every rapidly-growing city within this range should be eligible. Only those cities that could be expected to benefit a significant number of persons from declining regions, as well as the unemployed within the center, should be eligible.

A difficult problem will be to avoid unnecessary subsidies for places whose future growth requires no additional stimulus. Moreover, the policy must avoid catering to the industries and interests that profit from growth per se, as distinct from the region-wide interest in building a sound and diversified urban economy. Care must also be taken to avoid simply relocating industries from one area to another, and thereby possibly aggravating the problems of some areas while mitigating those of others. A growth center policy, misdirected, could inadvertently produce overurbanization, or merely represent a transfer, not a reduction, of national problems.

Statistics and research

At present, there is a minimum two-year delay in the publication of final and detailed data on births and deaths. In spring 1972, the most recent detailed vital statistics available were for 1968. This delay has done much to reduce the value of the information collected because all major analyses of trends in fertility and mortality at the national and local, socioeconomic and racial levels are dependent on those detailed tabulations. Moreover, the detailed tabulations furnish indispensable raw materials for the construction of intercensal estimates of the changing population of regions and localities.

The Commission recommends that the National Center for Health Statistics improve the timeliness and the quality of data collected with respect to birth, death, marriage, and divorce.

Our decennial censuses, together with our vital and migration statistics, provide the materials for developing quite accurate annual estimates of the nation's total population classified by age, sex, and race. They are wholly inadequate, however, to permit the construction of annual estimates for regions, states, and local areas, or to portray the intercensal social-economic status of the nation's constituent populations. The interval of 10 years between censuses—a leisurely pace established in the 18th century—is simply too long in view of the high mobility of our people.

The Commission recommends that the decennial census be supplemented by a mid-decade census of the population.

Organizational Changes

The primary focus of the federal population research program is the Center for Population Research—an operating unit of the National Institute of Child Health and Human Development. The Center supports research in the development of new contraceptives, the medical effects of existing methods of fertility control, and the social and behavioral aspects of population change. Although creation of the Center was a worthwhile development in 1968 when the government was first beginning to acknowledge the need for population research, the program has now outgrown this organizational arrangement.

A greatly expanded and more focused population research effort is needed. In addition to strengthening programs in basic and applied reproductive research and evaluation of contraceptives, the behavioral research program must be significantly enlarged.

Creation of a separate institute should provide a stronger base from which this increased effort can be directed. It would facilitate acquisition of qualified personnel, laboratory and clinical space, and other resources necessary for a diversified research program. It would increase the visibility of the population research program, signal to the world that it ranks high among our research priorities, and should help in commanding the level of funding that we believe is necessary but which has not been forthcoming.

We therefore recommend the establishment, within the National Institutes of Health, of a National Institute of Population Sciences to provide an adequate institutional framework for implementing a greatly expanded program of population research.

Programs affecting population distribution are scattered throughout the government. For example, the problems of growth and development of urban, suburban, and rural communities are closely related but, depending on their size, communities that seek help for planning and constructing public facilities must deal with one or more of three different departments that support these activities.

It is necessary to make organizational

changes to coordinate and, in some cases, consolidate existing urban and rural development programs and provide a locus for the studies of population growth and distribution necessary for policy development and program implementation in the areas of housing, economic development, transportation, and other related fields.

Congress is currently considering legislation that would establish a new Department of Community Development. Under this proposed reorganization, a single federal department would administer the major programs of assistance for the physical and institutional development of communities—for physical and institutional development of communities—for planning and building houses, for supporting public facilities and highways, and for strengthening state and local governmental processes.

This proposal is one of four submitted by President Nixon for reorganization of the federal departments. Each of them raises a great number of issues that are not our concern and on which we are not qualified to comment. However, from the perspective of better facilitating and guiding population distribution, coordination and consolidation of urban and rural development programs is essential.

We therefore recommend that Congress adopt legislation to establish a Department of Community Development and that this Department undertake a program of research on the interactions of population growth and distribution and the programs it administers.

Office of Population Growth and Distribution

Our government has no explicit population policy. Federal programs generally operate without regard to their effects upon population growth and distribution or how shifts in population pattern affect programs. What is needed is an organizational unit with the ability to take the broadest possible view of population issues, to transcend individual departmental points of view, and to develop and formulate coherent population policies. This can be done most effectively from the Executive Office of the President which is able to coordinate the activities of all departments. This new office should:

Establish objectives and criteria for shaping national growth and distribution policies.

Monitor, anticipate, and appraise the effects on population of all governmental activities—including health, education, and welfare programs; defense procurement policies; and tax laws—and the effect that population growth and distribution will have on the implementation of all governmental programs.

Provide for the review, integration, and coordination of population programs, giving consideration to the role played by nongovernmental resources and institutions.

Assume responsibility for preparation and submission of the biennial Report on Urban Growth required by the Housing Act of 1970.

Assist state and other units of government concerned about population matters in dealing with their problems.

We therefore recommend the creation of an Office of Population Growth and Distribution with the Executive Office of the President.

Two years of study and deliberation have demonstrated to us that that population is initimately tied to numerous social issues. Yet, innumerable social programs are undertaken by the government each year without having any of the overall direction that we have imposed upon our economic and environmental activities. The Council of Economic Advisers and the Council on Environmental Quality keep the President and the public informed of the effects of public needs and policies with regard to the economy and the environment and recommend programs to assist economic growth and stability and to preserve the environment. Population and related social matters require the same level of attention.

We therefore recommend that Congress approve pending legislation establishing a Council of Social Advisers and that this Council have as one of its main functions the monitoring of demographic variables.

If this legislation is passed, if the Council is adequately funded and staffed, and if it shows that it will give proper consideration to population problems, then it could and should take over the functions and role of the Office of Population Growth and Distribution.

Congress has been the arm of government most interested in population problems. However, jurisdiction over population-related programs is scattered among many committees of Congress. If congressional review of population matters is to be most effective, some focal point within Congress is necessary. One committee should have responsibility for studying issues from the perspective of their effect upon population growth and distribution, for spotlighting problems, and for reviewing the implementation of federal programs in these areas.

In order to provide improved legislative oversight of population issues, the Commission recommends that Congress assign to a joint committee responsibility for specific review of this area.

STATEMENT OF JOHN D. ROCKEFELLER III, CHAIRMAN, COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE ON PART II OF THE FINAL REPORT

In this second section of the Commission's report we set forth our recommendations in regard to education, childbearing and childrearing. They represent two years of intensive deliberations by the Commission and its able staff, based on extensive research under contract to others.

These brief introductory comments of mine I offer as background in your consideration of our recommendations:

1. From the beginning, the overriding goal of the Commission has been the enrichment of human life not its restriction. In advocating a national population policy we seek to assure greater opportunity for all Americans so that each may have a better chance of attaining his full potential with respect and dignity.

2. The Commission recognizes and would stress that many of its recommendations seek to achieve social goals desirable and important in their own right—for example, greater opportunities for women and children, and freedom of choice in reproduction. These recommendations, are, of course, also relevant to population growth.

3. There has been much talk and concern about controls and coercion in the population field. The whole thrust of the Commission's effort has been the attainment of social goals through voluntary action, to be determined by the individual in his own best interest.

4. We recognize that such voluntary action will only be meaningful if we have true freedom of choice. This will require changes in some of our attitudes, patterns of behavior, laws and governmental programs. Only in this way will all people have access to the full range of our society's opportunities and services—particularly we have in mind women, minorities and the young.

5. Underlying all its deliberations, the Commission has sought to strengthen the bonds of family life by enabling parents and prospective parents to plan their childbearing and child-rearing so that every newborn infant will be a wanted child, raised in an atmosphere of love, respect and responsibility, because his or her mother and father have chosen to become parents.

We of the Commission recognize that not everyone will agree with all of the statements and recommendations in our report. We ask you to think of the report as a whole and to remember the breadth and the importance of the subject with which we are dealing. We ask you to remember that the report represents the best thinking of 24 individuals from a cross section of our society in terms of race, religion, age, occupation, geography, and beliefs. More particularly we ask you to remember, as I have already indicated, that the overriding goal of the Commission is to raise the quality of life for all Americans.

LAWSUIT AGAINST WAR

Mr. FULBRIGHT. Mr. President, on March 28, the Honorable Joseph S. Lord III, chief judge of the U.S. District Court for the Eastern District of Pennsylvania, filed what I believe to be an extremely significant opinion in the case of John S. Atlee and others against Melvin Laird, individually, and so forth. Judge Lord's opinion is particularly relevant to the present business of the Senate—the proposed war-powers legislation. I therefore ask unanimous consent that the opinion and an article entitled "Suit Against War Goes to Three Judges," by Donald Janson, published in the New York Times of Sunday, April 2, be printed in the RECORD.

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

[In the U.S District Court for the Eastern District of Pennsylvania—No. 71-2324]

OPINION—JOSEPH S. LORD III, CHIEF JUDGE, MARCH 28, 1972

(John S. Atlee, Henry Braun, Rev. David Gracie, John Malinowski, Joseph Miller, Helen K. Schotz, Seymour Schotz, and all other persons similarly situated, v. Melvin Laird, individually and as Secretary of the Department of Defense, Civil Action)

The plaintiffs in this suit allege that the prosecution of the war in Southeast Asia by this government violates various provisions of the United States Constitution, Treaties of the United States, and doctrines of international law. They seek a permanent injunction against the expenditure of funds for this war which have been authorized and appropriated by Acts of Congress. The defendant in this case is Melvin Laird, Secretary of the United States Department of Defense. The United States government, through the office of the United States Attorney for the Eastern District of Pennsylvania, has been granted leave to intervene. Originally, Richard M. Nixon, President of the United States, was a defendant, but on January 20, 1972, the government's motion to dismiss him as a party defendant was granted. The court has jurisdiction of the case under 28 U.S.C. 1331.

Plaintiffs have asked that a three-judge court be convened to hear this action. Since the plaintiffs seek an injunction restraining the expenditure of funds authorized and appropriated by Acts of Congress on the ground that such expenditures are repugnant to the United States Constitution, this is clearly a case which requires a three-judge district court under the terms of 28 U.S.C. 2282. See Flast v. Cohen, 392 U.S. 83 (1968).

The government, however, has filed a motion to dismiss the suit with this court, offering several separate grounds in support of its motion. My initial determination must be whether I, as a single district judge, have the power to dismiss this suit on the grounds alleged by the government, rather than request the convening of a three-judge district court.

In Ex Parte Poresky, 290 U.S. 30 (1933) (per curiam), the Court held that a single judge could dismiss the action rather than request that a three-judge court be convened where there was neither diversity jurisdiction, nor federal question jurisdiction because the federal question involved was clearly insubstantial. "* * * [T]he provision requiring the presence of a court of three judges necessarily assumes that the District Court has jurisdiction." Poresky, *supra*, 290 U.S. at 31.

The three-judge statute was later amended, and 28 U.S.C. 2284(5) now provides that "[a] single judge shall not * * * dismiss the action, or enter a summary and final judgment." Despite the language of this provision, the decision in Ex Parte Poresky is still good law. The provision has been interpreted to be a limitation on a single district judge's power only after a three-judge court has been properly called. The decisions have uniformly held that the single district judge to whom an action is originally presented may refuse to request a three-judge court and dismiss the action if he concludes that the general requisites of federal jurisdiction are not present. *E.g.*, Port of New York Authority v. United States, 451 F.2d 783 (C.A. 2, 1971); Eastern States Petroleum Corporation v. Rogers, 280 F.2d 611 (D.C. Cir. 1960); Jacobs v. Tawes, 250 F.2d 611 (C.A. 4, 1957); Hickmann v. Wujick, 333 F.Supp. 1221 (E.D.N.Y. 1971); Suskin v. Nixon, 304 F.Supp. 71 (N.D. Ill. 1969).

It is equally clear that a single judge must request the convening of a three-judge court if jurisdiction is present. A single judge may not decide that abstention is proper while a state court passes on the constitutional issue involved, and on that basis refuse to convene a three-judge district court. Idlewild Liquor Corp v. Epstein, 370 U.S. 713 (1962) (per curiam); Abele v. Markle, 452 F. 2d 1121 (C.A. 2, 1971); Landry v. Daley, 280 F. Supp. 929 (N.D. Ill. 1967).

"When an application for a statutory three-judge court is addressed to a district court, the court's inquiry is appropriately limited to determining whether the constitutional question raised is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented otherwise comes within the requirements of the three-judge statute." Idlewild, *supra*, 370 U.S. at 715.

Just as abstention is not proper, the single district judge may not refuse to request a three-judge court because he concludes that the case is better suited for declaratory relief rather than the injunctive relief which was also requested by the plaintiff. National Mobilization Committee To End War in Viet Nam v. Foran, 411 F. 2d 934 (C.A. 7, 1969).

It thus becomes necessary for me to determine which of the government's proposed grounds for dismissal of this suit involve jurisdictional questions which this court may consider.[1] The government has advanced four reasons for dismissal: (1) the suit is identical to other cases filed against the same defendants in other federal courts; (2) the complaint presents to nonjusticiable political question; (3) the action in effect is an unconsented suit against the United States; and (4) the plaintiffs lack standing to maintain this action. I have concluded that my power to rule on the government's motion extends only to the latter two grounds urged for dismissal.

It is first argued that this suit should be dismissed because numerous similar actions with sometimes identical complaints have been filed against the same defendants in various federal courts across the country. The government contends that a dismissal here would foster judicial economy and avoid the vexatious results of permitting multiple lawsuits. We note that the government has failed to show a single other suit challenging expenditures for the war which has been brought by the plaintiffs in this suit. The fact that counsel representing the plaintiffs in these various anti-war actions are the same would not seem to permit the inference that the plaintiffs in this suit are only "nominal," and that behind them lurk the same "real parties in interest" who have actually brought this and all the other similar actions. In any event, I will not rule on this ground for dismissal because it does not present a jurisdictional issue, but one which is addressed to a court's discretion. See Eastern States Petroleum & Chemical Corporation v. Walker, 177 F. Supp. 328, 334 (S.D. Tex. 1959). Of course, if a three-judge court is convened, the government may renew its motion, directing it to that court's power to dismiss for any proper reason, jurisdictional or otherwise.

As an alternative basis for dismissal, the government takes the position that the conduct of foreign policy, and particularly the manner and extent of financial assistance to foreign nations is committed to the discretion of Congress and lies outside the power and competency of the judiciary. It is contended that what the plaintiffs seek to litigate here is a nonjusticiable political question and therefore the court lacks jurisdiction over the subject matter.

Actually, this argument confuses two separate grounds for denying relief. Bell v. Hood, 327 U.S. 678 (1946), made clear that a court must entertain a suit where the complaint is so drawn as to seek recovery directly under the Constitution or the laws of the United States. Such a suit may be dismissed for want of jurisdiction only if the alleged claim under the Constitution or federal statute is sham, made solely for the purpose of obtaining jurisdiction, or is insubstantial and frivolous. "Jurisdiction * * * is not defeated * * * by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover." Bell v. Hood, *supra*, 327 U.S. at 682.

At the heart of plaintiffs' constitutional claims is the contention that the war in Southeast Asia is being waged in violation of Art. I, Sec. 8, Cl. 11 which provides that "[t]he Congress shall have Power * * * To declare War * * *." The plaintiffs allege that the Constitution requires a Congressional declaration of war or an equivalent act of Congressional authorization for the military activities being waged in Southeast Asia, and that in fact Congressional action which has been taken[2] does not fulfill this requirement. This claim is not so insubstantial and devoid of merit as to warrant dismissal on the ground of lack of jurisdiction of the subject matter. Commonwealth of Massachusetts v. Laird, 451 F. 2d 26, 29 (C.A. 1, 1971).

In Baker v. Carr, 369 U.S. 186 (1962), the Court emphasized that the question of subject matter jurisdiction should not be confused with the problem of whether a suit presents a nonjusticiable political question.

"The distinction between the two grounds is significant. In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded. In the instance of lack of jurisdiction the cause either does not 'arise under' the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Art. 3 § 2), or is not a 'case or controversy' within the meaning of that section; or the cause is not one described by any jurisdictional statute." Baker v. Carr, *supra*, 369 U.S. at 198.

In an action which on its face invokes the three-judge court statute, it is clear that a single judge is prohibited from any ruling on the merits of the action.[3] *E.g.*, Stratton v. St. Louis Southwestern R. Co., 282 U.S. 10 (1930). As the political question doctrine has developed, the inquiry into justiciability must necessarily proceed to a point which becomes entangled with the merits of the action.

In Powell v. McCormack, 395 U.S. 486 (1969), Adam Clayton Powell, Jr. alleged that the United States House of Representatives unconstitutionally excluded him from a seat in the 90th Congress. In considering whether the political question doctrine rendered the suit non-justiciable, the Court considered many factors, but the main focus of its inquiry was whether there has been a textually demonstrable constitutional commitment of the issue to another coordinate branch. The defendants argued that the House, and the House alone, has the power to determine who is qualified to be a member.

"In order to determine whether there has been a textual commitment to a co-ordinate department of the Government, we must interpret the Constitution. In other words, we must first determine what power the Constitution confers upon the House through Art. I, § 5, before we can determine to what extent, if any, the exercise of that power is subject to judicial review." Powell v. McCormack, *supra*, 395 U.S. at 519.

In deciding whether this suit presents a non-justiciable political question, an interpretation would have to be made by this court of the very clause of the Constitution, Art. I, Sec. 8, Cl. 11, which plaintiffs rely on on the merits. The First Circuit recognized this unavoidable entanglement in a recent decision which held that the war in Southeast Asia presented a nonjusticiable political question.

"In arriving at this conclusion we are aware that while we have addressed the problem of justiciability in the light of the textural commitment criterion, we have also addressed the merits of the constitutional issue. We think, however, that this is inherent when the constitutional issue is posed in terms of scope of authority." Commonwealth of Massachusetts v. Laird, 451 F.2d 26, 33–34 (C.A. 1, 1971).

Thus, I conclude that as single district judge I lack the power to rule on the government's motion to dismiss on the ground that the suit presents a nonjusticiable political question. *See* Abele v. Markle, 452 F.2d 1121, 1125 (C.A. 2, 1971); *see generally* Scharpf, *Judicial Review And The Political Question: A Functional Analysis*, 75 Yale L.J. 517 (1966).

The government also argues that this suit should be dismissed because while nominally against officers of the United States, it is in reality against the government itself. If its contention is correct that this is actually a suit against the United States, then a court would be without jurisdiction to hear the suit since there is no applicable statute waiving sovereign immunity. See Larsen v. Domestic and Foreign Commerce Corp., 337 U.S. 682, (1949). Since it is a jurisdictional issue, this court could dismiss the suit if it is barred by sovereign immunity. Osage Tribe of Indians v. Ickes, 45 F.Supp. 179 (D.D.C. 1942).

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[1] This admittedly is no easy task. In fact, the test has been strongly criticized as unworkable. "It is fruitless to pick nits over what is 'really' a matter of jurisdiction. 'Jurisdiction' is but a handy name with which to describe a collection of legal consequences." Currie, *The Three-Judge District Court In Constitutional Litigation*, 32 U. Chi. L. Rev. 1, 25 (1964).

[2] E.g., Acts of appropriation for war activities and extensions of the Selective Service Act.

[3] Except, as it may be determined, that the act attacked is without a doubt constitutional or unconstitutional. *Ex Parte Poresky*, 290 U.S. 30 (1933) (per curiam); *Bailey* v. *Patterson*, 369 U.S. 31 (1962) (per curiam).

Dugan v. Rank, 372 U.S. 609 (1963), provides the guidelines for the law of sovereign immunity. A suit is against the sovereign and barred if the judgment sought would expend itself on the public treasury or interfere with the public administration. It is also barred if the effect of the judgment would be to compel the government to act or restrain it from acting. However, two exceptions are recognized to this rule. A suit is not barred by the doctrine of sovereign immunity if it is alleged that the actions of the officers challenged are beyond their statutory authority or, though authorized by statute, the powers exercised or the manner in which they are exercised are in violation of the Constitution.

This suit clearly comes within the second exception to the rule of sovereign immunity. The expenditure of funds by the defendant to further the prosecution of the war in Southeast Asia is alleged to be in direct conflict with the requirements of Art. I, Sec. 8, Cl. 11 of the Constitution. Sovereign immunity is no bar to this action challenging the financing of the war in Southeast Asia. Berk v. Laird, 429 F.2d 302 (C.A. 2, 1970); Mottola v. Nixon, 318 F. Supp. 538 (N.D. Cal. 1970). *See also* Youngstown Sheet & Tube Co. v. Sawyers, 343 U.S. 579 (1952). *Contra* Luftig v. McNamara, 373 F.2d 664 (D.C. Cir. 1967) (per curiam).

The final ground urged for dismissal before this court is that the plaintiffs lack standing to maintain this action. Decisions denying standing have sometimes been based on a rule of self-restraint which the Court has developed, rather than a jurisdictional reason. Barrows v. Jackson, 346 U.S. 249, 255 (1953). The doctrine is somewhat complicated, as it "has become a blend of constitutional requirements and policy considerations." Flast v. Cohen, 392 U.S. 83, 97 (1968). For whatever reasons a court may deny standing, the Court's decisions indicate that standing may not be conferred unless consistent with jurisdictional limitations which are embodied in Article III.

"Generalizations about standing to sue are largely worthless as such. One generalization is, however, necessary and that is that the question of standing in the federal courts is to be considered in the framework of Article III which restricts judicial power to 'cases' and 'controversies'." Data Processing Service v. Camp, 397 U.S. 150, 151 (1970).

Therefore, I will rule on the government's motion to dismiss on the ground of lack of standing in light of the case or controversy requirement of Article III. Abele v. Markle, 452 F. 2d 1121 (C.A. 2, 1971). Plaintiffs have asserted standing as taxpayers, citizens, and voters. Each status must be scrutinized separately to determine whether any one of them is sufficient to confer standing to maintain this action. *See e.g.* Reservists' Committee To Stop War v. Laird, 323 F. Supp. 833 (D.D.C. 1971).

In Flast v. Cohen, 392 U.S. 83 (1968), the Court distinguished an earlier decision, Frothingham v. Mellon, 262 U.S. 447 (1923), which had denied standing to a federal taxpayer. In holding that a federal taxpayer had standing to challenge the allegedly unconstitutional expenditure of funds by Congress for aid to religious schools, the Court developed a two-part test for establishing standing as a federal taxpayer. First, the expenditure must be an exercise of congressional power under the taxing and spending clause of Art. 1, Sec. 8 of the Constitution. Secondly, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations upon the congressional taxing and spending power.

In Flast, the Court found that the expenditure by Congress was made pursuant to its Art. 1, Sec. 8, Cl. 1 power to spend for the general welfare, so that the first part of the test was satisfied. The Tenth Circuit has concluded that expenditures for the war have not been made under the taxing and spending clause but under the power to raise and support an Army and maintain a Navy, Art. 1, Sec. 8, Cl. 12 and 13. Velvel v. Nixon, 415 F.2d 236 (C.A. 10, 1969). However, the matter is not at all clear. "[T]he government probably uses its spending power whenever it spends, even if the disbursement is also supported by some other granted power. Furthermore, many activities are neither primarily spending nor primarily regulatory—the Vietnam war, for instance." Davis, *Standing: Taxpayers and Others,* 35 U.Chi.L.Rev. 601,663 (1968).

However, even if the first part of the Flast test is considered fulfilled, the plaintiffs here stil lack standing as taxpayers because of their failure to demonstrate that Congressional appropriations for the war violate specific constitutional limitations upon the taxing and spending power. In Flast, the First Amendment's Establishment Clause was alleged to be violated by the expenditures involved there, and the Court found that our history discloses that a specific evil feared by the drafters of the Establishment Clause was that the taxing and spending power would be used to favor one religion over another, or to support religion in general. The plaintiffs here have not been able to offer sufficient support, historical or otherwise, for an interpretation of the war-making clause as having an implied purpose to act as a specific limitation on the manner in which Congress could make expenditures. Pietch v. President of United States, 434 F. 2d 861 (C.A. 2, 1970); Velvel v. Nixon, *supra.*

Our inquiry concerning standing is not ended, however, because the only question involved in Flast was whether "* * * standing can be conferred on the taxpayer qua taxpayer consistent with the constitutional limitations of Article III." Flast, 392 U.S. at 101. "* * * [O]ur point of reference in this case is the standing of individuals who assert only the status of federal taxpayers. * * *" Flast, 392 U.S. at 102. The concurring opinion of Justice Fortas pointed to the issue now at hand.

"In terms of the structure and basic philosophy of our constitutional government, it would be difficult to point to any issue that has a more intimate, pervasive, and fundamental impact upon the life of the taxpayer—and upon the life of all citizens.

"Perhaps the vital interest of a citizen in the establishment issue without reference to his taxpayer's status, would be acceptable as a basis for this challenge. We need not decide this." Flast, 392 U.S. at 115–116.

Plaintiffs' possible standing as citizens must be analyzed in terms of the general criteria which have been developed by the Court.

"Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing." Baker v. Carr, 369 U.S. 186, 204 (1962).

The "personal stake" need not of course be one that is unique to that individual, but may be shared by millions of others with a similar status, as the federal taxpayers in Flast.[4] The nature of the personal stake and interest necessary under Article III for standing was explained most fully by the Court in a recent decision where the requirements for standing to seek judicial review of administrative action were relaxed. Data Processing Service v. Camp, 397 U.S. 150 (1970), and see the companion case of Barlow v. Collins, 397 U.S. 159 (1970). "The first question is whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise." Data Processing, *supra,* 397 U.S. at 152. "That interest, at times, may reflect 'aesthetic, conservational, and recreational' as well as economic values." *Id.,* at 154. In Data Processing the injury involved was an alleged economic one, a potential loss of business to the petitioners as competitors of the national banks to which the administrative ruling was directed. Barlow, *supra,* also involved an economic injury. The Court in its interpretation of Article III requirements explained that it had mentioned non-economic values so that it could "emphasize that standing may stem from them as well as from the economic injury on which petitioners rely here." Data Processing, 397 U.S. at 154.

For an economic injury to qualify as a sufficient personal stake, it need not be of any particular magnitude. *See* Harper v. Virginia Board of Elections, 383 U.S. 663 (1966) ($1.50 poll tax). It has been estimated that the economic injury to the average federal taxpayer caused by the Congressional expenditure attacked in Flast amounted to all of 12 cents ($.12). Davis, *Standing: Taxpayers and Others,* 35 U.Chi.L.Rev. 601, 611 (1968).

In this case plaintiffs allege that many billions of dollars have been spent in prosecution of the war in Southeast Asia, at the rate of approximately two billion dollars every month. They have alleged that this federal spending has in large part caused a rapidly increasing inflation from which all citizens suffer. War induced inflation-recess is alleged to have decreased the actual purchasing power of the dollar.[5] The government has not offered any evidence rebutting these allegations of economic injury, and since this is a motion to dismiss, all well pleaded facts are admitted. Therefore, I find that this alleged economic injury caused by the prosecution of the war is sufficient to confer standing.

Perhaps more fundamentally, plaintiffs have standing here as citizens to challenge the war because of its non-economic impact as well. As Data Processing pointed out, the interests to be protected may at times reflect other values. Conservationist groups, for instance, have been granted standing to challenge agency action which would affect natural resources such as our rivers and forests. Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F.2d 608 (C.A. 2, 1965) Sierra Club v. Hardin, 325 F.Supp. 99 (D. Alaska 1971).[6]

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[4] It seems a misnomer to speak of "personal stake" when plaintiff's interest is no different than millions of others, and the action seems primarily concerned with vindicating a public interest in an important national issue rather than a private wrong. Perhaps, such actions should more properly be designated "public actions" and be measured by different criteria for standing than "private actions" involving a distinct and discriminating injury. In any event, plaintiffs in this case will have to establish standing within the framework of Article III requirements now recognized by the Court. *See Flast,* 397 U.S. 83, 116–133 (dissent of Harlan, J.; Jaffe, *The Citizen As Litigant In Public Actions: The Non-Hofheldian or Ideological Plaintiff,* 116 U.Pa.L.Rev. 1033 (1968); Jaffe, *Judicial Control Of Administrative Action,* 459–500 (1965).

[5] Inflation is recognized as a time-honored device for financing wars. For an interesting discussion of means to finance World War II see the position papers of the Tax Institute Symposium of 1942. *Financing The War* 9 (Warren), 28–33 (Jones) (1942). The court, of course, does not venture an opinion as to whether the prosecution of the war in Southeast Asia has induced inflation.

[6] While these cases as well as *Data Processing* concerned whether standing to challenge administrative action had been conferred by Congress, they are applicable to the instant determination of whether plaintiffs have fulfilled the requirements of Article III, since Article III limitations on standing must always be observed. "Congress can, of course, resolve the question one way or another, save as the requirements of Article III dictate otherwise." *Data Processing,* 397 U.S. at 154.

There are few citizens who could be so callous as to be unmoved by the almost daily reports in the media of the death and destruction being caused by this war. The loss in human resources has been, and continues to be, staggering. In terms of American lives alone, there have been the deaths of over forty-five thousand soldiers, with injuries to hundreds of thousands more. The blood of these men provides a sufficient "conservational" interest on the part of every citizen in saving the human resources of this nation.

The fact that our nation is at war also necessarily causes some threat to the personal safety and security of all the citizens, given the complexity of international relations and the advanced means of war that have been developed through technology. Finally, plaintiffs have alleged that the expenditures of billions of dollars on the war has resulted in there being less funds available to be expended on urgent domestic needs, such as the housing, health and education needs of citizens. Considering the huge expenditures on the war this cannot be dismissed as idle speculation. Plaintiffs' interests as citizens are clearly more compelling than any aesthetic or recreation interests which Data Processing said may confer standing.

In terms of Article III requirements for standing, besides demonstrating that a sufficient personal stake or interest is present, it must appear that "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Data Processing, 397 U.S. at 153. Art. I, Sec. 8, Cl. 11, which plaintiffs have alleged has been violated, provides that "[t]he Congress shall have Power * * * To declare War * * *." The words themselves don't contain any intention to protect the citizenry, but the history of our Constitution reveals that this assignment of power to Congress was not a mere happenstance without purpose. It was the intention of the framers of the Constitution to make it more difficult for the nation to engage itself in war with all the sufferings which this entails for its citizens, by lodging the power in a body of men, rather than allow one man to make such a vital decision. The British monarch was not considered a proper guide for defining the executive powers of the president in this country when it came to the matter of war. Madison, *The Debates of the Federal Convention of 1787*, 140–141, 438–39 (Elliott ed. 1845); *see* Pusey, *The Way We go To War*, 41–48 (1969).

The citizen's interest in having his nation free of war was the very one being considered when the Constitution was written vesting the power to authorize war with the Congress, rather than the President. Thus, the plaintiffs in this case have standing as citizens to challenge the constitutionality of expenditures for the war.[7]

By holding that plaintiffs here have standing as citizens, the decision in Flast establishing criteria for federal taxpayer standing is not rendered a nullity. In fact, most challenges to Congressional expenditures would not involve issues of paramount national importance which have an impact on every citizen's life, such as a war.[8] Thus, there would be no citizen standing, and the litigant would have to establish standing as a federal taxpayer within the test developed by Flast.[9]

Recognizing standing in this case does not create a forum for "generalized grievances about the conduct of government or the allocation of power in the Federal System." FLAST, 392 U.S. at 106. The complaint in this action presents not an airing of a "generalized grievance" about the government, but an attack against a particular war, alleging that the prosecution of this war has not and does not conform to the requirements of law. Rather than being a complaint about the allocation of power in the Federal System, it is essentially a claim that the President and the Congress have not acted in accordance with the allocation of power as it is provided in the Constitution with regard to war.

For the reasons indicated, I conclude that neither sovereign immunity nor Article III limitations on standing are a bar to maintenance of this suit. The government's motion to dismiss on these grounds is denied, and the court is without power to rule on the government's other grounds for dismissal which are non-jurisdictional. Consonant with the conclusions expressed in this opinion and simultaneously with its filing, I am requesting the Chief Judge of the Circuit to convene a three-judge court to hear this action.

ORDER

And now, this 28th day of March 1972, it is ordered that the defendant's motion to dismiss be and it hereby is denied.

By the court:

JOSEPH S. LORD III, *Ch. J.*

[From the New York Times, Apr. 2, 1972]

SUIT AGAINST WAR GOES TO THREE JUDGES—U.S. COURT IN PHILADELPHIA REJECTS PLEA TO DISMISS IT

(By Donald Janson)

PHILADELPHIA, April 1.—After setbacks in numerous court cases around the country, antiwar activists scored a preliminary victory this week in challenging the legality of the Vietnam war.

With some strong language questioning the constitutionality of undeclared wars, Federal District Judge Joseph S. Lord 3d denied a Government plea to dismiss a suit by six challengers Tuesday and turned the case over to a three-judge panel to be constituted by the Chief Judge of the United States Court of Appeals for the Third Circuit here. It is the first war challenge to go to a special panel here.

The plaintiffs seek a judgment that the Vietnam action is unconstitutional because it has been pursued by President Johnson and President Nixon without a declaration of war by Congress. They want an injunction to bar Secretary of Defense Melvin R. Laird, the defendant, from spending taxpayer funds on the war.

Judge Lord noted in his opinion, the day before the Senate began debate on a broadly supported bill to deny a President the power to pursue war for more than 30 days without the specific consent of Congress, that the Constitution provides "the Congress shall have power . . . to declare war."

"It was the intention of the framers of the Constitution," he said, "to make it more difficult for the nation to engage itself in war, with all the sufferings which this entails for its citizens, by lodging the power in a body of men, rather than allow one man to make such a vital decision.

"The British monarch was not considered a proper guide for defining the executive powers of the President in this country when it came to the matter of war. The citizen's interest in having his nation free of war was the very one being considered when the Constitution was written vesting the power to authorize war with the Congress, rather than the President.

"Thus, the plaintiffs in this case have standing as citizens to challenge the constitutionality of expenditures for the war."

STANDING IS ISSUE

The Government had contended they lack standing.

The plaintiffs, in a suit sponsored by the National Civil Liberties Committee, cited the Pentagon papers—revealed last summer following unsuccessful Government court action to halt publication—as corroboration for their contention that President Johnson misled Congress and was planning a much wider war than he sought authorization for from Congress in the Tonkin Gulf resolution of 1964. In any case, they contend, the resolution and later defense appropriations were not the required declaration of war.

In seeking dismissal of the complaint, the Government also contended the financing of foreign policy was a political matter to be left to the discretion of Congress and not a question for court jurisdiction.

Judge Lord declined to rule on that, saying it involved the merits of the constitutional challenge and would have to come before the three-judge panel.

Last year the United States Court of Appeals for the Second Circuit in New York found the issue of the war's legality was not a political one beyond the jurisdiction of the courts, but held that Congress through the Tonkin Gulf resolution, appropriations and draft legislation was providing implicit sanction for the war.

David Rudovsky, counsel for the plaintiffs here, said the Constitution required explicit Congressional approval.

The Supreme Court has declined to hear appeals from past dismissals of cases brought on this issue by protesting draftees or antiwar activists. Mr. Rudovsky said a favorable decision by a three-judge panel here probably would—result in a Government appeal and the first Supreme Court review.

JUDGE MAY JOIN PANEL

Judge Lord, who might be a member of the three-judge panel, said the Government had offered no rebuttal to the plaintiffs' allegations that war-induced inflation had reduced the purchasing power of their dollars.

Further, he said, allegations of diversion of funds from urgent housing, health and education needs "cannot be dismissed as idle speculation."

Beyond that, he said, the "staggering" loss in human resources merits challenge.

"In terms of American lives alone," Judge Lord said, "there have been the deaths of over 45,000 soldiers, with injuries to hundreds of thousands more. The blood of these men provides a sufficient conservational interest on the part of every citizen in saving the human resources of this nation."

AMERICA'S PENSION SYSTEM: A $135 BILLION QUESTION

Mr. EAGLETON. Mr. President, private pension plans are an important factor in the economic security of millions of workers and their dependents. The

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[7] Having found that plaintiffs have standing as citizens, it is unnecessary to pass on their claim of standing as voters. Past decisions of the Court seem to recognize such a basis for standing only when the integrity of the vote itself, or the election process has been the interest sought to be protected. *See, e.g., Baker* v. *Carr*, 369 U.S. at 206–208.

[8] Thus, I disagree with the Tenth Circuit view that if a court recognized citizen standing to challenge the constitutionality of the war, "then obviously standing to sue can be found in every citizen to contest every Congressional or executive action of general import and the doctrine of standing will have lost all meaning." *Velvel v. Nixon*, 415 F. 2d 236, 238 (C.A. 10, 1969). Judge Gesell, in a recent decision recognizing citizen standing to challenge the constitutionality of members of Congress holding commissions in the Armed Forces Reserve, observed that there would be very few instances where a plaintiff could establish standing as a United States citizen. *Reservists Committee To Stop War v. Laird*, 323 F. Supp. 833 (D.D.C. 1971).

[9] Unless, of course, the plaintiff had some other status which conferred standing.

30 million employees covered by such plans—and there will be 45 million by 1980—have every reason to expect that their deplorably inadequate social security benefits will be substantially supplemented by their private pensions. Their private pensions hold the promise of a better, more secure retirement than they could ever hope to enjoy if they were dependent solely on benefits paid under public retirement systems.

But far too many retirees have found this promise to be illusory. The Labor Subcommittee of the Committee on Labor and Public Welfare has documented case after case of workers who discovered after many years of service that the pensions on which they were relying will never be paid. Perhaps as many as 95 percent of those who have left jobs in the last 20 years where they worked under a pension plan will never receive any benefits under the plan, according to subcommittee findings.

The subcommittee's investigations have been conducted under the leadership of the chairman, the junior Senator from New Jersey (Mr. WILLIAMS), and the ranking minority member, the senior Senator from New York (Mr. JAVITS). The findings that have been made through the subcommittee's activities and the legislation that is being developed result directly from the dedication and the commitment displayed by Senators WILLIAMS and JAVITS.

An article by Michael C. Jensen, published in the April 8, 1972, issue of the Saturday Review, provides an excellent discussion of the private pension problem and the outstanding work in this field by Senator WILLIAMS and Senator JAVITS. I ask unanimous consent that the article be printed in the RECORD.

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

AMERICA'S PENSION SYSTEM: A $135 BILLION QUESTION

(By Michael C. Jensen)

"We can never insure one hundred per cent . . . against the vicissitudes of life, but we have tried to frame a law which will give some measure of protection . . . against poverty-ridden old age."—Franklin D. Roosevelt, Signing of the Social Security Act, 1935.

Nearly forty years have passed since this nation formally committed itself to security in old age. Today, however, Social Security is hardly enough to support the aged even at poverty levels, and the elderly's own savings, invested and tucked away over a lifetime, manage to provide only about 15 per cent of what the retired live on each year. The result is that in the precarious bookkeeping of old age the private pension—once regarded as a simple "fringe benefit"—has beome for many a bedrock necessity.

In 1940 pensions covered only 4.1 million people. Since then they have mushroomed to the point where no fewer than thirty million Americans now belong to plans. Some are run by corporations, some by unions (primarily in trades where there are many small employers). But no matter who shuffles the papers, an overwhelming amount of the money—some 75 percent—is chipped in by the company boss, whether he is the Bank of America or the local contractor. Taken together, what has been piled up over the years is a formidable treasury rivaling the federal budget. Pensions have on hand some $135-billion in assets as of this year and are expected to have $250-billion by 1980. But as pension plans have burgeoned and reliance on pensions has increased, so, unhappily, has the realization that all too often this reliance is misplaced.

One Department of Labor official admits that one-third to one-half of those who think they will be covered by pensions will eventually find out they are not. Reformers who are now calling attention to the shortcomings of the system set out even more startling figures. Of all those who have worked at and then left jobs with pension plans over the last twenty years, according to a special U.S. Senate labor subcommittee report, only about 5 per cent will ever see their sliver of the multibillion-dollar pie.

Legislation to increase the reliability of pensions has been languishing in Congress for several years. But to date, pension reform, arcane and numerical in its details, has seemed designed more to send voters off to sleep than off to the polls to support an overhaul of the system. In this intensely political year, however, reform may well make some headway. Both Congress and the administration are paying more attention to the elderly as their ranks grow. Already a number of congressmen have adopted pension reform as a major bipartisan cause, including Democratic Representative John Dent of Pennsylvania, Republican Senator Jacob Javits of New York, and Democratic Senator Harrison Williams, Jr., of New Jersey. Their $135-billion question: How does so much money, which has no trouble finding its way around Wall Street, have so much trouble finding its way to retiring workers?

Just before last Thanksgiving, the labor subcommittee that is chaired by Senator Williams held hearings to get a few answers. A parade of elderly men and women filed into the hearing room. They sat at a big wooden table and, in turn, cleared their throats and began to tell their stories. Some of them were nervous and wary of the television lights, others angry, a few disheartened, but all had the same message. One way or another, they had lost out on a lot of money.

In his thirty-two years with A&P, Stephen Duane had worked his way up from stock clerk to assistant warehouse foreman. A&P then closed the warehouse, and though some fellow workers (those over fifty-five) got their pensions, Duane, at only fifty-one, turned out to be underage in A&P's plan. No pension. Edmund McCarthy, the father of a severely retarded child in a special school, could not move out of state when Mallinckrodt Chemical Works shifted its plant to a new site. At forty-seven, he lost all claim to the monies Mallinckrodt had put aside for him during his thirty years of driving the company's trucks. After lengthy employment with the Anaconda Company from age eighteen, Iris Kwek got caught in a company cutback. She was forty-eight, and even after three decades with the company she was still more than ten years away from the right to any pension.

What the hearings quite intentionally made clear was that "coming of age" in the pension game—that is, reaching the point at which the pension promise becomes a live claim that a worker who leaves or gets fired can take with him from the pension fund—is an arbitrary business. Though no law demands it, many plans do give workers some right to future pension before they actually retire, but this is usually at ages late in the working life—at fifty-five or sixty. If anything happens before the magic birthday, the whole pension can be lost. Frank Cummings, minority counsel for the Senate labor subcommittee, describes the situation of all too many workers. "Forty-nine years on the job. One day you get sick. You get fired. And you don't get a damned dime."

While arbitrary age rules are generally seen as the pension's greatest specific defect, this arbitrariness is viewed as part of a more pervasive shortcoming: an overall absence of laws to make those who control the mounting billions accountable to those who should eventually get a share of the money. Even reformers agree that most funds are run honestly and cautiously. But if those who hold sway over the money should have self-profit in view, there are few rules to limit what they can do. "Hardly anyone just walks off with the money," says one of the harshest critics of flimsy regulation. "There are so many things you can get away with legally, no one really has to steal."

Those who control the money have the power to direct millions into investments. In 1965 Senator John McClellan's investigating subcommittee uncovered the activities of one New York labor leader. Over the years he had helped found several union locals that subsequently established welfare and pension funds of which he was an officer. Eventually, he also helped set up several research foundations, of which he was also an officer, in such exotic places as Liberia and the Caribbean. Had any of the foundations been dissolved, he would have received a substantial share of the assets. Nearly $5-million from the union pension funds wound up invested and waiting in the far-flung foundations by the time the McClellan investigation came along. But the appalling note, the subcommittee concluded, was that nothing he had done was illegal.

Recently, the Securities and Exchange Commission charged officials of three related companies with using the pension fund of the Sharon Steel Corporation to buy stock in new subsidiaries and to lend them working capital. Nonetheless, one defendant told *The Wall Street Journal* that every move was aboveboard. Talks with the SEC are now under way for a settlement of the case in which the defendants would give up control of the pension money. But, although the SEC suit is still pending, no criminal charges are involved.

That few criminal charges can now be brought against those who invest in their own instead of workers' interests is, of course, only half the problem. If money is badly invested, it is simply not around when the fund has to begin paying it out. Scandalous as this seems, however, it is not so startling to those who have been looking closely into pensions. At any point in time, few funds, even the most upright, have accumulated enough money to cover all claims against them. This widespread undernourishment of funds is clearly far more inimical to the interests of expectant pensioners than incidents of deliberate abuse.

There is nothing illegal about falling short in the ability to cover all claims, and it happens to the best of funds. In theory, a company sets aside money for a worker over the forty or so years of his working life, then eventually uses that money plus interest to give the worker his $78 (or whatever) a month. In practice, things don't work that way. Inevitably, the day after a plan takes effect, someone passes sixty-five and becomes eligible for his $78. Although little or no money was put in for him over a period of years, money must be paid out anyway. Many plans never make up for these "unfunded" claims that they carry from Day One.

Situations such as that of Western Union Telegraph Company may result. With employee claims of $365-million against its funds, Western Union has only $50-million in fund assets. Western Union (and most companies in the same bind) argues that the only time such an unbalanced ratio would matter would be if the company were to go out of business—and Western Union does not think it is about to do so.

No corporation, however, is immune to financial failure—witness Penn Central. Or the Studebaker Division of Studebaker Packard,

the classic in-company collapse for anyone concerned with pensions. More than 4,000 Studebaker workers aged forty to sixty got only 15 percent of what the company owed them. Many got absolutely nothing. And with pensions, unlike money in the bank, there is no Federal Deposit Insurance Corporation to cover the shortfall.

In good part, the failure of pensions to serve as a sure financial mainstay for the retired comes from their growth for practical, not socially motivated, reasons. Historically, pensions have been less a commitment to those too old to work than an inducement to hold on to those who might go and work elsewhere. The funds' biggest growth surge came during World War II, a time when wages were frozen, and the plans became a way to lure scarce labor from competitors. With wage gains restricted, the new multimillion dollar funds struck union leaders as an impressive bundle to carry away from the bargaining table. Today companies still tend to regard pensions as "their" competitive tool—an extra gratuity for workers dispensed, like the gold watch, in return for long-term loyalty. And most union workers still see the pension promise as a trade off for money in-pocket now.

The use of pensions as a negotiated "fringe" of free enterprise also suggests why there has been so little outside review of their operations. The Treasury looks at the plans only to see if they merit and can maintain a tax-exempt status. The Department of Labor registers and files away the annual reports of some 34,000 funds, but, prevented by law from "interfering in the management of any welfare or pension benefit plan," the department rarely takes more than a cursory look at the numbers inside the reports. When the New York labor leader sent millions of dollars off to Liberia and the Caribbean, details were duly recorded in filed reports. "If you don't file," said a Senate aide, "you break the law. And there is no point in breaking the law since no one is going to read what you file anyway."

It is no wonder that pension funds have been lauded in the money markets as the most massive pool of unregulated money in the country.

If the reformers have their way, that free-wheeling definition will change. In fact, the least controversial change proposed—one that unions, cooperations, and politicians can all agree on—is for a clear law on the rights and wrongs of managing the billions. Conflicts of interest would be spelled out. Federal tabs would be kept on investments either at the Treasury, in the Labor Department, or in a big, new, wholly separate agency—which would certainly be justified in view of the amount of money involved. But while there is no longer much doubt that some part of the government will soon be routinely on the prowl for fraud, what reformers fear is that enacting a few laws to curb the most visible problems will let the pension industry glide right by the more profound questions that the whole present system poses: At what age should workers get their rights to pensions? Should they be able to build credits as they move from job to job over a whole working lifetime? What if the company or its plan is no longer around when the worker hits sixty-five? And if they are not, how can someone get the pension he has earned?

Proposed answers to these questions include the suggestion for a Federal Insurance Corporation to cover failed pension funds as the FDIC now covers failed banks. Funds would have to pay the government a premium for the insurance. To prevent the collapse of plans, if not companies, both Representative Dent and Senator Javits—but not the administration—have also called for beefing up the monies on hand in the funds over the next twenty to forty years so the funds can, in fact, cover all obligations. The reformers' most immediate concern, however, is to give workers an early and clear-cut claim to their future benefits.

The administration has a proposal that would ensure that workers begin to get credits toward pensions whenever their age plus number of years in a company tallies fifty. Representative Dent has proposed that credits go to workers after a flat ten years on the job. In the Javits plan, after six years a worker would begin to have claim to a percentage of what the company is putting by for him, with a full claim guaranteed by the tenth year. Javits would also set up a federal clearinghouse for pensions. As workers change jobs, carrying with them a bit of pension credit from here and a bit from there, the centralized service would keep track of all money ultimately due.

Giving credits toward pensions early in life and letting them build from job to job recognizes what most present plans fail to—that our economy is one of high mobility and fast technological obsolescence of jobs as well as goods. Present rules that honor longevity on the job were fine, says a counsel from the hearings, "when people stayed put in the same small towns and factories all their lives. But take the aerospace people. They move with the defense contracts."

Remedies for pension defects have been around Washington since a presidential commission's report on the system came out in 1965. Not surprisingly, the objections to that report filed by many of its corporate and union advisers are the same criticisms leveled at the reform bills now in Congress. Companies object to the bureaucracy of possible federal regulation with its promise of tie-ups and paper work. And they are critical, with some reason, of having to drop large sums into their funds to make sure there is enough on hand in case of corporate crack-up. As Western Union has said, it would rather pump the $3.8-million a year that such a buildup would require back into the company itself to ensure that the company *will* in fact survive.

As for the unions the auto- and steelworkers support change. But many others, such as the garment workers, see the reforms as costly items that could drive their often marginal bosses out of business. Nor are the unions and employers even allied in their opposition. For if more costly pension security does come along as law, companies say the only way they could meet requirements would be by cutting benefits, or the number of people covered, or workers' paychecks—not a set of solutions the unions will stand for.

Despite these widespread objections there lurks in the background a prod to accepting the beginnings of real reform. Radical critics of the system talk of folding pensions into Social Security or making them mandatory instead of voluntary; the talk may soon be taken more seriously if milder reform does not come about. Few want to see pensions engulfed in Social Security, which would result in the loss of flexibility in benefit arrangements and the loss to the economy of those investable billions. Mandatory plans seem equally threatening, although Finland, which legislated a mandatory system over the protests of businessmen in 1962, has managed to make its aging workers self-sustaining without causing hardship to the economy. In Finland each worker chalks up credits toward a pension from age twenty-three on. When he moves out of the work force, he can expect from the cumulative contributions of all his past employers about 40 per cent of his final salary as retirement income.

Whether or not such a system would work here is, of course, open to question. Finland has only two million workers. We have eighty million in the work force. But the increased complexities that size poses here are not the only difference. Our country was one of the last industrialized nations to accept the need for Social Security. The Scandinavian nations were among the first. Overcoming complexities may be less important than developing this nation's ability to care about the needs of the ever growing group of older people in its midst.

At base, that problem of attitude may be *the* problem of pensions. One union leader talks of how tough it has been to persuade workers of the significance of pensions, of what life over sixty-five on a bone-bare income might mean. He shakes his head: "You just can't sell the young on the idea they will ever be old." But fortunately, these days it looks as if those who do know what it means, by virtue of their sheer, growing numbers, are at last beginning to sell some understanding on their own.

SOIL CONSERVATION SERVICE ASSISTANCE TO OREGON FARMERS AND RANCHERS

Mr. PACKWOOD. Mr. President, the Soil Conservation Service has consistently provided outstanding technical assistance to Oregon farmers and ranchers in their efforts to preserve and protect our irreplaceable natural resources. I had the opportunity today to testify in behalf of increased funding for the SCS programs.

Mr. President, I ask unanimous consent that my statement before the Agriculture, Environmental, and Consumer Protection Subcommittee of the Committee on Appropriations be printed in the RECORD.

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

SOIL CONSERVATION SERVICE APPLICATIONS

(Statement of Senator BOB PACKWOOD, April 10, 1972)

Mr. Chairman, and members of the subcommittee, I would like to thank you for this opportunity to appear before you today, and for holding hearings on appropriations for the Soil Conservation Service.

Oregon's rapid population growth has placed new pressures on our natural resources. The concentration of 60 percent of our population in the Willamette Valley has created new environmental problems and has aggravated old ones. It is projected that by 1985, Oregon's population will increase approximately 25 percent to more than 2.5 million. If Oregon is to continue to improve and preserve its environmental quality, we will need additional Federal funding for projects similar to those sponsored by the Soil Conservation Service.

I have received many letters and telegrams from Oregonians urging me to speak to this subcommittee in their behalf. I have visited many Oregon farmers and ranchers and have personally observed their conservation practices. Many of these efforts, however, would be impossible were it not for the technical assistance provided by the Soil Conservation Service.

The SCS currently provides assistance to nearly 21,000 landowners and operators in Oregon. This assistance covers the 59 locally organized soil and water conservation districts, which comprise 86 percent of the state's total land area.

My testimony today is principally concerned with four phases of the soil and water conservation program; (1) federal assistance to conservation districts, (2) the snow survey program, (3) the small watershed program, and (4) resource, conservation, and development projects

ASSISTANCE TO CONSERVATION DISTRICTS

During the past five years, the corps of technical conservationists employed by the SCS in Oregon has declined over 20 percent. It is indeed unfortunate that at a time when increasing emphasis is being placed on the preservation of our environment, fewer people are provided for this highly successful conservation program.

Congress must also recognize the needs of new conservation districts. Two districts in Oregon's Crook and Harney Counties are now in the process of organization. Funds for staffing these new districts are essential.

SNOW SURVEY PROGRAM

Much of Oregon's water supply comes in the form of snow which is stored as snowpack in the winter and early spring. The SCS is responsible for measuring snow in order to forecast water supplies, streamflows, and flooding.

The Service receives repeated requests from irrigation districts, hydro-electric power producers, and flood forecasters for appraisals of snow and precipitation in the mountains, snow melt rates, and more accurate peak and volume streamflow forecasts. This is now possible using modern techniques of radio telemetry systems, which monitor a variety of parameters affecting the mountain snowpack. Oregon urgently needs a proposed automatic telemetry system which would consist of 47 telemetered data sites to be installed over the next five-year period.

SMALL WATERSHED PROGRAM

Since 1954, 57 groups throughout the State of Oregon have submitted applications for planning assistance under the provisions of PL–566, the Watershed Protection and Flood Prevention Act. Although 21 watershed projects have been authorized for planning assistance, the remaining 36 have been placed in a growing backlog, with priorities determined by the State Engineer. Our watershed applications have far exceeded the financial capacity of the Soil Conservation Service. Oregon is not unique in this regard. Funding for the small watershed program must be increased if the needs of Oregon and the nation are to be met.

RESOURCE, CONSERVATION AND DEVELOPMENT

Resource, conservation and development projects have been extremely successful in Oregon. The Upper-Willamette Resource, Conservation and Development Project was one of the first in the nation. Its 226 active resource project measures have increased Oregon's gross income by $5 million. The Columbia-Blue Mountain RC&D Project was approved for operations just one year ago.

One other project, the Grant-Wheeler RC&D, has had an application submitted since 1968, and many Oregonians are hopeful that it will soon be authorized. With other Resource, Conservation and Development applications currently being prepared, it is obvious that additional strains will be made on SCS RC&D funds. I strongly urge an increase in the appropriations for RC&D programs.

Last year, in his "Salute to Agriculture," President Nixon requested that Congress increase funds for the Soil Conservation Service. Congress responded favorably, but, as we all know, the Office of Management and Budget impounded a large portion of those funds. Oregon farmers and ranchers find it doubly discouraging that in this, the third year of "The Environmental Decade," the President has proposed a $23 million cutback in SCS funding.

There are few Federal programs from which Americans are able to see such a large return to their tax dollar. We cannot afford to ignore the importance of such programs. They have contributed greatly to our goal of preserving and protecting our irreplaceable natural resources.

NEW YORK CHAPTER OF THE UNITED NATIONS ASSOCIATION SUPPORTS GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, recently I received a copy of the statement made by the New York chapter of the United Nations Association. The association, organized to support U.N. activities within this country, reaffirmed its faith in the Genocide Convention of 1948. The New York chapter unanimously called upon this distinguished Chamber to move swiftly toward ratification of this humanitarian treaty.

Mr. President, I ask unanimous consent that the New York resolution be printed in the RECORD so the Senate might note the chapter's strength of conviction in favor of the convention.

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

UNITED NATIONS ASSOCIATION OF NEW YORK, N.Y., STATEMENT ON GENOCIDE CONVENTION

The United Nations Convention on "Prevention and Punishment of the Crime of Genocide" was adopted by the General Assembly in 1948 and has been ratified by 75 member nations, but no ratification has yet been completed by the United States, although such approval has been strongly supported by every American President holding office since the Genocide Convention was first offered for signature.

We commend President Nixon for recently resubmitting this Convention to the Senate. We note with satisfaction the action of the Senate Foreign Relations Committee in recommending its ratification.

The United Nations Association of New York, N.Y., noting that its Annual Meeting is being held on the date which has been designated as an International Day to Combat Racism and Racial Discrimination, believes that the most important step which it can take on this significant occasion is to reaffirm our support for the Genocide Convention. We, therefore, urge that prompt action be taken to bring about its ratification.

THE BOWIE KNIFE

Mr. FULBRIGHT. Mr. President, the Bowie knife has a famous place in American history. Many are acquainted with the stories and legends about the life of Jim Bowie and the Bowie knife. However, relatively little is known about the man generally credited with inventing the Bowie knife, James Black.

Mr. Black was an accomplished blacksmith and metallurgist who spent most of his life at Washington in Hempstead County, Ark.

In the unique village of Washington, Ark., the blacksmith shop of James Black has been reconstructed, and the tavern where Black probably ate in his early days at Washington and where Sam Houston, Stephen Austin, and Bowie lived while in Arkansas, has been restored. In addition to the blacksmith shop and the tavern, the Pioneer Washington Foundation has restored and opened to the public a number of historic homes, including the home of Augustus Garland, the Attorney General of the United States in the Cabinet of President Grover Cleveland.

Mr. President, John Fleming recently wrote an article for the Arkansas Gazette about the man who invented the Bowie knife. It is an interesting, well-documented account of the life of James Black.

Mr. Fleming also writes about the picturesque little town of Washington and says:

Probably nowhere in the Southwest is there a better collection of pioneer antiques than in this multi-building museum complex.

Mr. President, I ask unanimous consent that the article of historical interest be printed in the RECORD.

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

THE TALE OF THE MAN WHO INVENTED THE BOWIE KNIFE

(By John Fleming)

Most school children of the Southwest are acquainted with at least one of the several dozen versions of the life of James Bowie, who died at the Alamo after a stormy career as a man-about-town, a sharp land promoter and a knife-fighter supreme. But few know anything about the man whose skills as a blacksmith and metallurgist contributed mightily to the Bowie legend.

The life account of James Black, who spent most of his 72 years at Washington in Hempstead County; Arkansas, has more pathos than a Victorian novel, more climaxes than a modern soap opera and surpasses any tales of courage ever set down by Horatio Alger. Black and "Little Washington" have been relegated to the back pew in the modern tourist assembly, mostly because the picturesque, little town lost its place many years ago as the crossroads of traffic in Southwestern Arkansas. It is only nine miles from Hope off Interstate 30 and two billboards, one south of Hope on I–30 and one to the north, would probably send streams of tourists into the historic village. So far this obvious gimmick has been overlooked.

James Black fits the typical prototype of the Alger hero. He was born May 1, 1800 in New Jersey. His mother died when he was a small boy and his father married again. He disliked his stepmother, so at the age of eight, he ran away to Philadelphia, passed himself off as being 11 and became an apprentice to a silversmith. Later, when his father died, he went home, looked in the family Bible, found out his true age but neglected to tell his employer. Thus, at the age of 18 (instead of the traditional 21) he became a journeyman.

This is Black's own account of his early years as he told it to Daniel W. Jones, governor of Arkansas from 1896 to 1900. Jones, who had befriended the aging and blind Black as Jones' father had before him, wrote the account of Black's life and it was contained in the papers of the well known Arkansas historian, the late Charlean Moss Williams.

British competition had made the silversmith trade almost nonexistent at the time the young apprentice became a journeyman so he headed for the wilderness. Black traveled by way of the Ohio River, down the Mississippi and to Bayou Sara in Louisiana where he found work as a helper on a ferryboat. Later, he hired out as a deckhand on a boat going up the Red River and came to Fulton, then a river port of more than a little importance.

The word "later" is important here because, if Black arrived in Louisiana in 1818, he would have had to wait at least six years before making his appearance at Washington because the town wasn't founded until 1824. However, the town grew rapidly since it was the junction point for the Fort Towson Trail, running east and west, and the Chihuahua Trail (later the Southwest Trail) running from the northeast to the southwest. At one time Washington had as many as 2,000 resi-

dents. Governor Jones' letter credits Black with helping build the town so it is likely that he was among the first to arrive.

In fact, he almost had to be among the first settlers. The Jones letter gives no definite dates but it is possible to figure out a reasonably chronology as his biography reveals itself.

When he arrived at Washington, Black went to work for a blacksmith who had already set up shop. In pioneer days the blacksmith was a community's most important citizen because he also served as gunsmith, armorer, maker of plows and other garden implements and general fixer. The young Yankee quickly picked up this trade and became very valuable to the man who had hired him.

The next chapter could challenge an old-fashioned melodrama. The blacksmith had a son Black's age and they became fast friends. He also had a daughter a few years younger than Black and, naturally, Black fell in love with this beautiful girl and she returned his affection. Her father had planned better things for his pretty daughter. He forbade her to marry the young upstart—but continue to employ the suitor because he was afraid of competition.

All this must have transpired in about a year because, probably in late 1825, Black dropped his job and headed west, intent on making his fortune and coming back to claim his sweetheart who had promised to wait for him. Black went northwest less than 50 miles (a good distance in those days) and settled on Rolling Creek in what is now Sevier County. All alone, he began cutting a home out of the wilderness. The Jones letter says he stayed here "five or six years" but it couldn't have been much more than five or he could not have gotten back to Washington in time for his date with Jim Bowie and destiny.

Black was an ambitious man. Neighbors began arriving on this fertile land and, with their help, he built a dam on the stream intending to erect a grist mill. Now came the first of a long series of tragic reverses that turn Black's life into something that wouldn't even be believable on modern television soap operas. Just as he was about to finish the dam, a sheriff showed up with a proclamation announcing that the land had been ceded to the Indians and the "homesteaders" would have to leave.

Black went back to Washington and married his beloved Anne who had, true to her promise, waited for him. His father-in-law, however, did not forgive and forget but vowed eternal vengance on this man who compounded his alleged crime of marriage by opening an opposition blacksmith shop—and a thriving one at that.

In the early 1800s, a knife was as much a part of the well dressed man as his shoes. No citizen in his right mind would venture out of the house without his knife and James Black gained a reputation as the best knife maker in the territory. Black's knife was forged from a secret process that was similar to the famous steel of Damascus.

No one ever discovered how he came across the formula but it played a dramatic role in his life until two years before his death. His custom-made knives sold for from $5 to $50 depending on the plating. Being a journeyman silversmith, Black understood these processes and would plate the blade with either gold or silver.

The preponderance of evidence points to Black as the inventor of the Bowie knife. Most historians accept the Black legend as fact and at least two of America's best known knifesmiths credit him unequivocally—lending additional support to Arkansas' claim.

Bowie very probably arrived at Washington in December of 1830. The Louisiana knife fighter was in Arkansas attending court, and he and his brothers were interested in several land deals involving thousands of acres of Arkansas property. He asked Black to make him a knife according to his specifications, so the smith made two knives, one the way Bowie wanted it made and another model of his own. Bowie, allegedly, bought the Black version without hesitation. Delivery was probably made in January of 1831.

Bowie's success as a knife fighter and the praise he had for the knife made by James Black brought customers to Black's shop asking for a knife "like Bowie's." In short order this phrase was dropped and the customers simply asked for a Bowie knife.

It must be noted that early in this century J. Frank Dobie, the Texas historian, made an effort to research the origin of the Bowie knife. He finally wrote:

"Bowie's knife has become nothing less than the American counterpart of King Arthur's Excalibur or Sigmund's great sword Gram. It's origin is wrapped in multiple legends as conflicting and fantastic as those that glorify the master weapons of the Old World." But it is not known whether or not Dobie had access to Governor Jones' letter.

The original Bowie knife was lost at the Alamo. Legend has it that Bowie's body was found surrounded by dead Mexicans who had been slashed to death by it. This version is seriously doubted by historians because it is known that Bowie was desperately ill at the time of the attack and it is unlikely that he was able to put up much of a fight.

Black's wife bore him four children—three boys and a girl—but she died six or seven years after the marriage. (History doesn't record what happened to the children.) The death of his daughter further incensed the older blacksmith. During the summer of 1839, says the Jones letter, Black was taken down with a protracted fever and was bedfast in a weakened condition. His father-in-law reportedly came to Black's home and attacked the ill man with a heavy stick, and only the appearance of Black's dog saved his life. The dog drove the intruder off—but the attack affected Black's eyes and he was blinded.

Black started for Philadelphia to have his damaged eyes treated, but somewhere along the way someone sent him to an eye doctor in Cincinnati who was reputed to be phenomenal in his cures. The Cincinnati doctor turned out to be a quack who finished the damage allegedly done by the father-in-law. On his way back from the East, Black stopped in New Orleans to consult another eye doctor who told him flatly that his eyesight was gone forever.

The Washington smith had been gone from home about a year, and on his return he found out that his father-in-law had administered his estate as though he were dead and he was peniless. The law was clearly on Black's side but he had no money to hire lawyers and his former employer had the best legal counsel available.

At what is now Buzzard's Bluff in Miller County on the Red River, there lived two brothers, John and Jacob Buzzard. These men invited Black to come live with them. This he did and stayed for two years. Never despairing for his eyesight, Black heard that Dr. Issac N. Jones had moved from Bowie County, Texas, and had begun practicing medicine at Washington. He asked the Buzzards to take him to Washington so he could consult the new doctor who was rapidly gaining a reputation as an excellent physician and surgeon.

Dr. Jones took the ailing man into his home but he was unable to do anything to improve his eyesight. There were four Jones boys, so the country doctor made a deal with Black: He gave him room and board plus medical care in return for Black's looking after the boys while he, the doctor, was out on his many rural calls.

The Jones letter reports that "Black came to my father's and lived with us as a member of our family until his death on June 22, 1872, some thirty years. My father used his best skill to restore his eyesight, but without success, and finally told him it would be useless to torture him when there was no hope, but that he would be an inmate of the home while he lived, and that he (Dr. Jones) would be sufficiently compensated if he would look after and advise his young boys—there were four of us—while he was away from home attending to his patients, of whom there were many.

"My father died in 1858—killed by the explosion of a steam boiler on his plantation—but Black, by consent of the family remained with us. After the death of my mother, I took him to my home in Washington, where he lived until his death."

James Black possessed an extraordinary memory and he became the arbiter for arguments about the early days in Washington and the surrounding area. He told fascinating accounts of pioneer times to the Jones boys and often kept them up until midnight with his tales.

The tragic climax to the life of James Black is told best in Governor Jones' words:

"On May 1, 1870, his 70th birthday, he said to me that he was getting old, and in the ordinary course of nature could not expect to live a great while longer; that I was 30 years old, with a wife and growing family, and sufficiently acquainted with the affairs of the world to properly utilize the secret which he had so often promised to give me; and that if I would get pen, ink and paper he would communicate with me, and I could write it down.

"I brought them and told him I was ready. He said, 'In the first place'—and then stopped suddenly and commenced rubbing his brow with the fingers of his right hand. He continued this for some minutes and then said, 'Go away and come back in an hour,' while he still rubbed his brow I went out of the room but remained where I could see him, and not for one moment did he take his fingers from his brow or change his position.

"At the expiration of an hour, I went in and spoke to him. Without changing his position or any movement he said, 'go out again and come back in another hour.' I went out and watched another hour, his conduct being the same. Upon speaking to him at the expiration of the second hour he again said, and without altering his movements, 'go out and come back in another hour.' Again I went out and watched, the same thing continuing.

"When I came in and spoke to him at the end of the third hour, he burst into a flood of tears and said, 'My God! My God! it has all gone from me! All these years I have accepted the kindness of these people in the belief that I could repay it all with this legacy, and now when I attempt it I cannot! Daniel, there were twelve processes through which I put my knives, but I cannot remember even one of them. When I told you to get the pen, ink and paper, they were all fresh in my mind, but now they are all gone. My God! My God! I have put it off too long.'

"I looked at him in awe and wonder, the skin from his forehead having been completely rubbed away by his fingers. His sightless eyes full of tears and his whole face the very picture of grief and despair. I could only say, 'Never mind, never mind, Mr. Black, it is all in the wisdom of God. He knows best. Don't worry.'

"For a little over two years, he lived on, but he was ever after an imbecile. He lies buried in the old graveyard of Washington, and with him lies buried the wonderful secret which God gave to him and was unwilling for him to impart it to others."

In fiction, the life of James Black would never be believed. In fact, it has never been accorded the recognition it deserves.

Washington, a forgotten crossroads, is nine miles from Hope on state Highway 4 and 18 miles from Nashville, also on Highway 4. The blacksmith shop of James Black has been

restored, and the tavern where Black probably ate in his early days at Washington and where Sam Houston, Stephen Austin and Bowie lived while in Arkansas, has been reconstructed. There is the old courthouse that served as the state capital during the Civil War and old homes lend a touch of grandeur to the scene. Probably nowhere in the Southwest is there a better collection of pioneer antiques than in this multi-building museum complex.

And, of all the wraiths that spur one's sense of history at this picturesque Arkansas village, the ghost of James Black is the most dramatic.

CHILDREN ORPHANED AND WOUNDED IN VIETNAM WAR

Mr. HATFIELD. Mr. President, I am deeply grateful to the Senator from Arkansas (Mr. FULBRIGHT), chairman of the Foreign Relations Committee, for holding a 1-day hearing April 15, 1972—during a very busy week for him and for the committee, because of the simultaneous Senate floor action on the war powers bill. The committee heard several fine witnesses testify on S. 2497, the Vietnam Children's Care Agency, which coauthors Senators HARRISON WILLIAMS, HAROLD HUGHES, and I propose to have set up to provide many self-help care programs for the mothers and families with children who have been abandoned by their American fathers, been orphaned or otherwise physically or emotionally wounded by the war in Vietnam.

The primary thrust of the legislation is to aid the children themselves by providing any number of special services for them—for instance, day care centers to help their mothers or foster family to hold down a job and care for them as well, or hostels for the homeless children and food feeding programs, to name just a few of the possibilities for use of Federal money which could be used by private, nonprofit organizations in Vietnam. There are many such organizations now at work in Vietnam who are trying to provide for an overwhelming need with too meager funds.

As our American soldiers leave Vietnam, we are leaving behind thousands of Amer-Asian children. Our Government has a moral responsibility to help to care for these children and for the other abandoned children who have been wounded, orphaned or more homeless, because of the war. The Vietnamese Government simply does not have the financial resources to handle the task alone, nor the trained personnel to cope with the numbers of children. We could, under our bill, help train Vietnamese for the work, as well, because of the flexibility of the legislation.

It has been estimated by the Agency for International Development that there are 700,000 orphaned children in Vietnam—400,000 orphaned or half-orphaned as a direct result of the war, and another 300,000 who have been orphaned as an indirect consequence. The Vietnamese Government makes support payments to the children of 400,000 servicemen who were killed in action.

I was pleased to note that several months ago, AID, in conjunction with the Government of South Vietnam, has belatedly undertaken a program which is similar in scope to the one proposed by S. 2497. They propose to provide a multifaceted program to aid the children.

It is expected that AID will spend $1.2 million this year to aid these children, however, there is no assurance whatever that the work will continue once all our troops have been withdrawn from that country. We are told that AID personnel are leaving at the rate of 15 to 20 percent of their total personnel each year. They have also reduced their medical aid program from a total of $10 million spent in 1967 to $2.7 million in 1971.

There are at least 60 nonprofit, private relief agencies at work in Vietnam, but I am told by those returning from there who have worked in these agencies—Don Luce, who was with the International Volunteer Services and who now heads the Indochina mobile education project and Louis Kubicka, who was with the American Friends Service Committee as a volunteer worker at their Quang Ngai Refugee Center for 4 years—that the private agencies cannot begin to meet the need of the suffering children who have been abandoned or made orphans by the war.

Most of those with whom I have talked have given tentative approval to S. 2497, because they see within the bill the beginning of a moral commitment of our Government to begin to rebuild what we have torn apart. It is most unfortunate that the administration has chosen not to endorse this work, for the job now being done in Vietnam to aid the children just is not being done.

The Vietnam Children's Care Agency could provide the vehicle to channel public moneys through some of these private groups. I might suggest a few. The Holt Children's Agency. This Oregon-based group is presently negotiating with the South Vietnamese Government to provide emergency rescue service to help save the many children who are being placed in the orphanages of Vietnam. The mortality rate is very high—estimates are that 50 to 80 percent of those who are admitted later die. The conditions of these orphanges beg description. The Holt Agency is proposing to help save the lives of these children before they are admitted to the orphanages and later they will work on providing adoption services for some of the children.

The late Harry Holt organized the Holt Adoption Program, Inc., after the Korean war, and he set up orphanages and the group has since placed over 8,000 children in American homes through adoption. His work continues, but the new directors wish to broaden the service, learning from the mistakes of the past work in Korea. Many children, they found, were deliberately abandoned by the mothers, because of the availability of the orphanages and also because they themselves—and their babies—were outcasts in their society because of the pregnancy. This is a major reason why in S. 2497 we deemphasize orphanages and stress other services which will keep children with their mothers if possible, and with foster parents or in hotels if this is not possible.

Our bill could also prove helpful to such organizations as Foster Parents, Inc., which presently cares for over 5,000 abandoned Vietnamese children and those living at home; the Christian Children's Fund; the American Friends Service Committee; Church World Service; Catholic Relief Services; the Committee of Responsibility or even the shoe shine boys of Richard Hughes.

Dick Hughes, whom I met last year when he returned briefly to this country from Vietnam to raise money, is a young newspaperman who, because of his shock at seeing the homeless boys adrift on the streets of Saigon, left his profession to help care for over 200 boys in five youth hostels he started, one at a time. He did this with the help and cooperation of the Vietnamese who contribute their time, equipment, money and, most important, their services, such as tutoring, doctoring, nursing and so forth. Most important, the abandoned boys who were roaming the streets of Saigon and other cities—20 of them at least—are now being given a home and care. But much more is needed.

We expect that there will be a certain fear on the part of those who will oppose spending the $5 million which we propose in this bill, because they will ask "Why send more money into Vietnam, because of the corruption of the present government?" There will be opposition, as well, to setting up yet another agency, which they fear will prolong our involvement in that country. This is why the coauthors have sought to focus on eventual turnover to the United Nations, so that we may receive the support of other governments of the world.

All of our sources from Vietnam tell us that more dollars—much more—will be needed in Vietnam to relieve the human misery caused by the war, especially now as the daily news reports are coming in of the refugees fleeing from the attacks of the North Vietnamese across the DMZ.

We need to begin now and not wait until all our troops are withdrawn from Vietnam. We cannot wait, although I agree with Don Luce and Lou Kubicka that, as Luce said:

I believe, however, that it is only a partial solution and may ease the conscience of some towards the continued destruction in Vietnam. The real problem is the continuation of the war which creates more orphans and economically and culturally weakens the Vietnamese family structure and its ability to cope with the problem.

Mr. President, I ask unanimous consent to have printed in the RECORD the testimony of Mr. Jack Adams, of the Holt Adoption Program, Inc.; the testimony of Mr. Don Luce, of the Indochina mobile education project; and Mr. Louis Kubicka, speaking for the Friends Committee on National Legislation. I should also like to include in the RECORD a short description of S. 2497.

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

TESTIMONY OF DON LUCE

I support the concern that bill number S. 2497 represents. I believe, however, that it is only a partial solution and may ease the conscience of some towards the continued destruction in Viet Nam. The real problem is the continuation of the war

which creates more orphans and economically and culturally weakens the Vietnamese family structure and its ability to cope with the problem.

I believe that there have been at least 200,000 Amer-Asian children born and probably twice that number. As a researcher for the World Council of Churches, I studied the problems of post-war reconstruction and the rehabilitation of women who have worked as bar-girls, prostitutes or temporary wives.

I obtained the number of bars in different cities, from the tax collection offices, visited a sample of the bars and found out how many women worked in each bar. I estimated that there were between 100,000 and 300,000 bar girls, prostitutes, and temporary wives in Viet Nam in late 1969. Almost all of these women had at least one Amer-Asian child. Just about every bar had at least one woman pregnant by an American soldier.

Most of the bar girls, prostitutes and temporary wives were once farm girls. They have been forced from their rural villages by the war (usually by U.S. leaflets telling them that they are going to be bombed or by our firepower itself). After they are crowded into the refugee camps, an older woman comes into the camp and offers them lots of money to work in the bars. They need money for their families so they go to work in a bar or brothel.

Soon they become temporary wives. It is more permanent and they are less apt to catch venereal disease. They usually have a child by their American "husband." They want to have children because the Vietnamese feel that a child is the most precious possession a man can have. If they have a child, they feel, their soldier will not leave them.

But it is extremely difficult for an American soldier to marry a Vietnamese girl. It takes months of paperwork. Sometimes they get married and things usually work out fine. But, more often, the soldier just passes his wife on to a buddy or tells his wife that he'll be back in a few days (to keep her from being so upset when he leaves). He never returns and his wife returns to the bar to find another husband.

Usually the women send their children home to their parents and provide money each month to their families to take care of the children. Sending the child to an orphanage is the last resort. They know that sending their child to an orphanage will probably result in his death. The women are caught: they must continue to sell themselves in order to have money to send home—in doing this, they have more children.

The French provided good education to the French Eurasian children. Their children are now doctors, lawyers, teachers, etc. and there has been almost no discrimination against them. At the same time, no aid was given to the children of the North African Legionnaires. The Afro-Asian boys grew up to become front-line cannon fodder and the girls have become bar-girls and prostitutes in the bars for American black soldiers. Because of this and because some Vietnamese are prejudiced against people of darker skin, there has been more discrimination against the half-black children.

The United States has provided no assistance for any of the Amer-Asian children. I believe there will be increasing discrimination against these children. As the U.S. continues the bombing of all Viet Nam, increases aid to the corrupt police force, and keeps the unpopular Thieu regime in power, there is more and more anti-Americanism.

The problem of orphans and Amer-Asian children exists because the United States continues to bomb the countryside, tear apart the economy, and intensify the breakdown of the family structure. If the U.S. withdrew its troops, ended the bombing and withdrew its military and paramilitary support from the Thieu regime, then the Vietnamese would have peace. At that time, the Vietnamese could begin to repair the damage done to their society and adequately care for the orphans and Amer-Asian children.

I believe that it is important for this committee to consider the following points:

I. The present Saigon regime is not concerned about the welfare of the orphans, Amer-Asian children, or other war victims. Only about one-half of one percent of the national budget goes into welfare. Only $1.45 per child per month is allotted to orphanages to care for the children. A Vietnamese, or American, couple that want to adopt a child in an orphanage must have been married ten years, have no natural children of their own, and one of them be at least 30 years of age or else get special permission of the president of the country. This leads to many forms of bribery and the cost of adopting a Vietnamese child may run as high as $2500.

Bill S. 2497 proposes that the program "be administered only with the consent of the Government of South Viet Nam and in accordance with such arrangements as may be mutually agreed upon by the Agency and that Government."

In essence, Bill S. 2497 puts the funds into the hands of a few individuals in the Saigon government that have already shown little concern in the past for the welfare of the children.

II. Bill S. 2497 proposes to help care for the orphans and Amer-Asian children but does not deal with the causes of the problem. One-third of the peoples of Cambodia, Laos and the southern half of Viet Nam are refugees. The bombing of all Indochina continues and the problems are further intensified.

Many people will use Bill S. 2497 to ease their consciences—"But look at all the good we're doing. We're helping all those orphans," some will say.

III. Vietnamization has intensified the problems. Budgets for civilian humanitarian aid such as health care have decreased, while para-military aid has increased.

IV. Assistance to the mothers and towards strengthening the family structure must be the emphasis of Bill 2497. For example, there are almost no free clinics for the treatment of venereal disease. U.S. soldiers have caused a terrific increase in the venereal disease rate, yet we have done little to control it. I would like to propose that funds be included for venereal disease control centers throughout the country.

I would like to commend the writers of this bill for including Section 7. I believe that encouragement of United Nations and other multilateral and nonprofit organizations is extremely important.

I am opposed to establishing separate orphanages for Amer-Asian children. Such isolation would cause extreme psychological adjustments when they were "released." In a case where either parent can care for the child or Vietnamese parents are available I am opposed to adoptions here in the U.S. I support the concept of foster parents (e.g. through Foster Parents Plan).

There are thousands of children being inadequately cared for in the orphanages. I have visted many of these orphanages and seen the results of too many children and too few people to care for them (e.g. at Go Vap orphanage there are 1213 orphans for 16 nuns—a ratio of 76 children to each adult). The children are starving for affection. The result of this is described in a letter that I recently received from Tom Fox who has lived and worked in Viet Nam for five years as a social worker and journalist:

"Apparently, the bill to help Vietnamese orphans comes up next month . . . I am aware that men of good intentions have mixed feelings on what should be done for the orphans. But one fact should be beyond any dispute and that is that the children should be gotten out of the orphanages of Viet Nam.

"I visited the Go Vap orphanage yesterday. They have taken in about one hundred of the Long Thanh orphans, as if they did not have enough infants already. Most of the children were four years or younger. They all seemed to be the same height, about two and a half feet tall. They came running up to me, their thin arms outstretched, looking up, begging to be picked up and held. Their little fingers kept moving, grabbing upwards into the air. I was surrounded by the children and could not hold them all. Those that I did not pick up held onto my legs fulfilling their instincts to be near an adult. The children, unlike other Vietnamese of the same age, did not fear me. Nothing was familiar enough to them to be strange, and hence they did not fear. When I lifted them they screamed out with joy almost like a lover would meeting a lover after long separation. That deep hallow feeling grew in my stomach. It was an emptiness stemming from a knowledge that I could not deliver the love so desperately needed.

"The youngest infants upstairs sat up and laid in cribs. Many were only a few weeks old. They are still coming in. Many were Americans. Many showed compulsive anxiety, knocking their little foreheads against their mattresses, continually swatting at their cheeks, eyes rolling back and forth, dazed, not seeing, scared. They were dying in front of me for lack of affection, needing so much to be held. Six nuns worked continuously to assist the children but, alas, all they could do was feed and clean up after them.

"One three year old black American, stomach distended, had rubbery legs. The nun said she has never shown a desire to walk. Another two year old white American in diapers looked emaciated, seeming to be a third of his real age. I doubt if he can live another month.

A nun told me that American soldiers used to come in to play with the children but they no longer come. Vietnamese families, she explained, face the explosive, depressing inflation, and can barely find the energy to care for their own young. . . .

"Rosemary Taylor, a living saint I am convinced, has many more applicants for children than she has children (from orphanages) available for adoption. Why? Because the orphanages, both Catholic and Buddhist alike, are afraid to give up their children to foreigners. Catholic orphanages insist the parents must be Catholic and most Buddhist orphanages do not give up the children to anyone. . .

"I write this to you now because the problem of orphans in Viet Nam is continually growing. The problem is not "winding down." Parents are not coming back to life. I have a feeling people in the U.S. want to do something but do not know what to do.

"I suggest that the bill now in Congress be encouraged to pass. I suggest that the GVN be encouraged by all possible American means to modify its adoption policies. I suggest that immediate priority be given to making money available for orphanages in Viet Nam that are willing to increase the quantity and quality of their staffs. I am aware that many orphanages abuse funds given to them so there must be some controls.

But it is important that an American-Vietnamese organization be founded to care for the paperwork allowing the children to get out of the country. Ideally, as you (Don Luce) have long suggested, this should be an international organization, hopefully under the United Nations. But the need to act to help the orphans is desperate and immediate."

In closing I urge this committee to take action as rapidly as possible on passing this bill. It will not solve the problem, but perhaps it will provide some help for a few individuals.

Secondly, I repeat, that the real problem is the presence of U.S. troops, planes and

materials. When we leave, the Vietnamese can solve their own problems. These hearings, the necessity of these hearings, is sad testimony to the fact the U.S. Congress has not yet been able to control the U.S. military and stop the destruction brought on by our massive military power.

STATEMENT BY JOHN E. ADAMS

Those aged one to fourteen make up over one-half the uprooted refugee population, and it is estimated that between 200,000 and 320,000 children have lost one or both parents. By any count, the children of Vietnam have suffered heavily in the fighting that has taken place.

On the basis of our recent study of the situation, those children who are left in orphanages are increasing in number with a growth rate of about 7% per year. This is in spite of the fact that the mortality rate of infants abandoned is extremely high in the orphanages. The need is acute, and unless some minimal constructive measures are taken at this point, there is a danger that there will be a repetition of the Korea experience, when the orphanage population more than tripled following the fighting.

We would argue that we as Americans have a moral responsibility to these children. It is not enough to wage a war and lay down the lives of many men to protect the right of self-determination and of political freedom, however this may be defined. The violence has not been limited to either side, and the plight of many of these children is the direct result of American fighting.

The Administration admits that it is concerned about this problem and is trying to do something about it. It also says that it is doing what is needed but our observations would indicate the contrary. What good does it do to allocate 2½ million dollars for projects in child welfare for one calendar year, with no assurance of funds to be available for the succeeding year. This 2½ million dollars was not even guaranteed to child welfare. It was only made available providing it could be justified against other priority needs. We observed at firsthand the struggle of those responsible for attempting to put together a responsible program. How does one plan meaningful programs using this amount of money, get them authorized, enlist the necessary personnel, of sufficient quality, and execute the programs all within the space of a few months. This is a patently self-frustrating approach to the program and the Administration position only underlines the necessity for legislation setting up an ongoing program with adequate funding, long range planning, and continuity. We also observed that the number of mixed race children in orphanages at present appears to be over twice as high as the figures reported by the Vietnamese government.

We urge the passage of S. 2497 on the basis of our personal observations in Vietnam during January and February of this year (1972). We (I) append the complete report of our survey trip for your information.

TESTIMONY OF LOUIS P. KUBICKA

My name is Louis Kubicka. I am 30 years of age. I worked in South Vietnam with the American Friends Service Committee (Quakers) for four years, returning to the United States in July 1971. Three of those years I worked in general administration, while the fourth I worked as Director of Quaker work in South Vietnam. I speak Vietnamese. Today I am speaking for the Friends Committee on National Legislation which represents 22 of 28 Friends Yearly Meetings and 10 Friends organizations in the United States, but does not purport to speak for all Friends.

The Quaker program in South Vietnam was begun in 1966 in an attempt to aid Vietnamese refugees and war injured civilians. For a period of five years we operated a child day-care center in Quang Ngai City which is now continuing under the direction of the Ministry of Social Welfare. Presently we are continuing, in Quang Ngai, a rehabilitation program for war injured civilians which was begun in 1967. This program includes production and fitting of artificial limbs, physical therapy, and reconstructive surgical services and social rehabilitation services; and the training of Vietnamese personnel in all these areas. We have served thousands of these injured people in the last five years. Approximately one-third of our patients have been children, and therefore I feel qualified to speak on the problem of the war in Vietnam as it affects children, and the problems of trying to alleviate the suffering caused by the war.

We deeply appreciate the concern to help the children in Vietnam which motivates the sponsors of this legislation, Senators Williams, Hughes and Hatfield. They have shown by their votes on amendments to end the war that they, like we, believe the first and most helpful way to help the children of Vietnam and all Indochinese people is to end the war immediately. We believe it is the failure of our Government—and, in a real sense, the American people—to put human values above ideology and dubious geopolitical power struggles that brings us here today.

Our basic view of S. 2497 is this: We believe the most important part of the bill is Section 1. There it is recognized that the United States has a moral responsibility for the children of Vietnam. The children of Vietnam have been some of the chief victims of this war, and the size of the problem is immense. Meeting the needs of Vietnamese children is beyond the capabilities of the present South Vietnam Government and beyond the provisions of this bill. A lasting solution can only come with a complete end of the war and the installation of a popular government in Saigon which is dedicated to the welfare of the people. Until then, programs such as those proposed here provide only marginal benefit. Ideally, the bill's scope should be broadened to include all the children of Indochina.

BASIC PROBLEMS

Here are the problems that we see confronting the children of Vietnam. We believe that we must try to take a broader perspective than is usually taken by Americans if we are to accept our moral responsibilities to the children of Vietnam.

1. Children are being killed in large numbers by bombing, artillery fire, mines, napalm, rockets, the cross fire of contending forces, accidents caused by unexploded munitions, and in trying to collect the reward offered by Americans for turning in dangerous mines and booby traps. The Senate Judiciary Subcommittee on Refugees estimates 325,000 civilians killed in South Vietnam alone in the period of 1965–71, of which 30%, about 100,000, were children under 13 years of age. While the war continues in Vietnam, Cambodia and Laos children will be among its principal victims. Responsibility for their deaths is a central issue with respect to the immorality of our government's policy.

2. Children are being injured by these weapons, including anti-personnel weapons designed to maim rather than kill. Three-quarters of a million civilians in South Vietnam have been injured by the war. Perhaps a quarter of a million have been children. South Vietnamese crippled children receive virtually no education or training that might prepare them to make the most of what remains of their abilities. They will be almost totally unable to make an economic contribution to their own support except through begging.

3. Children have been orphaned in huge numbers. One estimate is 700,000. Pressure from a deteriorating economic situation has forced families to abandon their children to orphanages. The death toll in orphanages, sometimes estimated as high as 80%, means that Vietnamese and American fathered children are dying at a shocking rate.

4. Children are commonly held in political prisons along with their parents. In Quang Ngai prison across the street from our residence there were customarily 40 children present, including new-born babies. We ran a program for pregnant women in prison and several of the children were picked up by our small school bus in the morning and taken to the Quaker day-care center.

5. Child labor is extremely common of necessity. In addition to the millions of children forced to labor to continue to their own or their families' survival, we find that families are often forced to give up their children to work as servants, often virtually as slaves. This sort of thing is very common in South Vietnam. I would guess that over a hundred thousand children who should be in school in preparation for a future are laboring as household servants. From my experience, I know that it is not that Vietnamese love their children less than we do but mainly because of war-caused economic pressures. Children are also forced into prostitution and such degrading tasks as leading the crippled and blind and maimed through the streets of South Vietnam's cities on begging excursions. Children are also involved in "pimping" and handling heroin transactions. Large numbers of children are full time scavengers in the dumps and refuse heaps of every major U.S. base in South Vietnam.

6. We also have good reason to suspect that there is a serious pressure for pregnant women in dire circumstances to abort their unborn children. This, too, is a moral problem for which we are in some measure responsible. Of course the extent of such a problem would be most difficult to ascertain accurately.

SOME SPECIFIC CASES

Our consideration so far of the problems of children has been in the abstract. But in order to see what these problems mean concretely we have drawn a few case histories from our files at the rehabilitation center in Quang Ngai.

1. Dung, aged 8, who lost both legs in a mine injury, was evacuated to Chu Lai by U.S. army. His mother lost touch with him, as she was refused entry to Chu Lai to see him. The child did not know where he came from and as a result was sent to the wrong Province Hospital. From there he was sent to the Invalid Childrens Orphanage, and from there to the Quaker rehabilitation center for fitting of artificial legs. He claimed his parents were dead, but a few days later his mother found him; she had been coming to the hospital every day to see if he was there, and by chance came to ask at the Rehabilitation Centre.

2. Tao, 12 years. His mother is paralyzed from the chest down. Father dead or away as soldier. Live in An Sen, and as result of war have lost their land. The boy therefore has to assume total health care for the mother, which includes washing her and cleaning her as she has no control over body functions. Two younger siblings aged 6 and 4. He also has to support the family which he does by working as a day laborer in the fields.

3. Phuong, 16 years, is paralyzed below the waist. She lives in Phu Quy, is totally dependent on father and younger sister for her care. Previous to the mine injury that killed her mother, her sister and injured her, she was working full time in the fields for the family and caring for her younger brothers and sisters. Now she is totally dependent on them. Her father begged us to take care of her since he has very little work and can barely support the rest of the family. But at 16 there are few orphanages willing to undertake the care that a para-

plegic requires and certainly nowhere that she can learn to take full care of herself and be able to earn a living. So she stays in her village, with no medical facilities, lying in a refugee hut; twice she has had to come back to the hospital for treatment of an infection and malaria. Her prospects are dim, and yet such a child in the U.S.A. would expect to live a full and independent existence.

4. Lieu, 6 years, stepped on mine and lost both legs. Now walks with difficulty although has severe muscle contractures requiring years of careful supervision by rehabilitation staff. Mother supports family financially and cannot stay with him in the center for the long periods required. He will probably go home and sit in a chair for the rest of his life. He is young and people feel sorry for him, but when his parents are too old to care for him, he will have no training and no livelihood except by begging.

5. Quy lost both hands to a booby trap. Now 13 years old, could read and write. Fitted with artificial hooks which he became adept with. However VN is hot and the plastic limbs are heavy, so he rarely wore them, as he could do most things with his stumps. Had a special spoon and cuff for eating. Bright alert boy who loved to try to type, desperately needs training if he is to be financially independent.

THE PENDING BILL

We have difficulty in offering constructive comment on S. 2497 because, in our view, it attempts to deal with a situation involving inherent contradictions. We don't believe it is possible to take effective steps to substantially alleviate the suffering of Vietnamese children while the war continues. Hence our comments must of necessity be focused on some of the problems we see in the bill, without being able to offer constructive alternatives.

We do believe, however, that it is important in Section 1 to have a public acknowledgement of the moral responsibility of the United States for Vietnamese children.

In addition, the bill helpfully encourages adoption of American-fathered Vietnamese children who are not living with their Vietnamese families. While this is not an area where I have expertise, I have seen enough to lead me to believe that for such children a life with a loving American family would be far preferable to the situation confronting abandoned children in Vietnamese orphanages or on the street.

With regard to the provisions for a child care program, I have many more questions.

Money is not the main problem. We see three major impediments to effective help to children through the legislation before you.

1. Ending the war, and not just American involvement in the war, is the primary requirement for helping the children. All other help to children pales in comparison to what this would mean. Until the war is over we will generate more problems than solutions.

2. The bill channels U.S. aid, necessarily, through the existing inadequate government.

My experience leads me to believe that the Saigon government, because it has not identified with the interests of the common people, does not command the allegiance and commitment of the sort of dedicated workers who could carry out effective child welfare programs. There are some capable and dedicated Vietnamese now working in government child welfare programs. But the magnitude of the need is so great, as a result of this disastrous war, that only a large scale community-based education and welfare program with wide popular support could hope to mobilize sufficient human resources to do an adequate job.

Perhaps one of the reasons for the lack of success of the government's social welfare efforts has been the ill-concealed and shortsighted use of welfare aid as a carrot or stick to achieve political support for or submission to the GVN. Concerned Vietnamese hesitate to commit themselves to a program which has tended to be used to buttress the government in power rather than help needy people.

The provision in the bill for direct assistance to private non-profit organizations is especially commendable. There are some capable and highly motivated persons in some of the nongovernmental agencies. The problem once again is that any such assistance would be under direction and control of the Government of South Vietnam in accordance with Section 2(a): "The program shall be administered only with the consent of the Government of South Vietnam and in accordance with such arrangements as may be mutually agreed upon by the Agency and that Government." Thus the private non-profit agencies would tend to be at the mercy of the South Vietnamese Government since the Government control of funds would work to increase control over the policies of these organizations. If private agencies become closely allied with the Government their problems of recruiting dedicated workers, especially at the local level, would be greatly increased.

A leading Buddhist monk once told me, "We do not like the Communist establishment, but we like those people who have committed themselves to that side because of their dedicated will to serve the people. Our dilemma is that we like the form of government in South Vietnam but we do not like the people who remain in control—the same people who were in control under the French and who do not care about the common people of Vietnam."

3. The bill is too narrow in scope. The United States has a moral responsibility to alleviate the war-caused suffering of all of the children of Indochina, not just children in government-controlled areas of South Vietnam. Fully interpreted this would mean help to children in Provisional Revolutionary Government controlled areas of South Vietnam, in the Democratic Republic of Vietnam, in Laos and Cambodia. Realistically, at the present time this responsibility should be expanded from South Vietnam to Laos and Cambodia, where massive and indiscriminate bombing of civilian populated areas is continuing to kill and wound children and make them refugees and orphans.

As a nation we are continuing to divide Vietnam by war, in the name of our national security, and in order to keep ill-conceived promises that were made to a minority in South Vietnam. After 25 years of war the first need of Vietnam is for peace with justice to all parties to the conflict, insofar as that can be achieved. Vietnam urgently cries out for healing and this can only come through a settlement of the war.

Every year the war continues, in addition to the killing and maiming, the social and economic fabric of Vietnam and Cambodia and Laos become weaker. Not surprisingly, those who bear the brunt of suffering are the weakest, the little people, the peasants who have left their land, the ordinary people, the hundreds of thousands of invalids and the children.

It is a hard thing to have to say, but we believe the truth to be that social rehabilitation while the war continues is first aid salve on a wound that hasn't been washed.

S. 2497

A bill to authorize the President, through the temporary Vietnam Children's Care Agency, to enter into arrangements with the Government of South Vietnam to provide assistance in improving the welfare of children in South Vietnam and to facilitate the adoption of orphaned or abandoned Vietnamese children, particularly children of United States fathers

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

(1) the United States has a moral responsibility to assist the Government of South Vietnam in the care and protection of all South Vietnamese children, particularly those orphaned or abandoned, and

(2) the United States has a special responsibility to assist in facilitating the care or adoption of children in Vietnam whose fathers are United States citizens and who are not living with their Vietnamese families.

CHILD CARE PROGRAM

SEC. 2. (a) The President, through the Vietnam Children's Care Agency established under section 4 of this Act (hereinafter referred to as the "Agency"), shall establish and administer a program for all children living in South Vietnam who are, as determined by the Agency, (1) 16 years of age or younger, and (2) orphaned, abandoned, or living in poverty as a direct result of the hostilities in Vietnam or conditions related to such hostilities. The program shall be administered only with the consent of the Government of South Vietnam and in accordance with such arrangements as may be mutually agreed upon by the Agency and that Government.

(b) In carrying out the program established under this section, the Agency may provide—

(1) assistance to aid such children described in subsection (a) of this section in growing up in their own or foster families through the establishment, expansion, and improvement of day care centers and the improvement of school feeding programs.

(2) assistance to orphanages in which children described in subsection (a) of this section are living, including food and clothing assistance and assistance for the improvement of the physical facilities of such orphanages;

(3) for the training of persons employed in day care centers and orphanages in Vietnam;

(4) for the training of persons on matters relating to child health care and pre-natal and post-natal care; and

(5) assistance for the improvement and expansion of the existing hostel program which provides housing for children described in subsection (a) of this section who do not live with their families.

(c) The Agency is authorized to provide, on such terms and conditions as it considers appropriate, direct assistance to public or private non-profit organizations which provide any of the types of assistance referred to in subsection (b) of this section, and to assist in coordinating the activities, services, and programs of such organizations.

(d) Not less than 60 per centum of the funds appropriated to carry out the provisions of this Act shall be used for the purposes specified in clause (1) of subsection (b) of this section.

ADOPTION OF SOUTH VIETNAMESE CHILDREN

SEC. 3. (a) The President, through the Agency, shall enter into negotiations with the Government of South Vietnam to facilitate the adoption by United States citizens of children in South Vietnam who are ten years of age or younger. Adoption procedure shall be carried out strictly on a case-by-case basis, but the President shall attempt through such negotiations with the Government of South Vietnam to obtain a standardization of forms and procedures in South Vietnam and the United States which would significantly improve and hasten the entire adoption process and shall seek to obtain an easing of the South Vietnamese requirements for the issuance of exit permits for adopted children.

(b) The Agency is authorized to enter into agreements and to make grants, on such terms and conditions as it considers appropriate, to State and local governmental agen-

cies and private non-profit organizations to assist in arranging for the adoption by United States citizens of children in South Vietnam who are ten years of age or younger.

(c) In conducting the negotiations referred to in subsection (b) of this section, the Agency shall be primarily concerned with, and shall facilitate, to the maximum extent practicable, the adoption of children in South Vietnam—

(1) whose fathers are determined by the Agency and the Government of South Vietnam to be United States citizens, such determination to be made on the basis of a statement by the father, mother, or relative, or on the appearance of the child, and,

(2) (A) whose mothers are deceased, (B) whose mothers, have irrevocably relinquished all parental rights, or (C) who have been abandoned and are living in orphanages in which no family has assumed responsibility for their upbringing and the whereabouts of the mothers are unknown.

(d) Not more than 10 per centum of the funds appropriated to carry out the provisions of this Act may be expanded in carrying out this section.

VIETNAM CHILDREN'S CARE AGENCY

SEC. 4. (a) There is established in the executive branch of the Government a temporary independent establishment to be known as the Vietnam Children's Care Agency. The Agency shall be responsible, under the direction of the President, for carrying out the provisions of this Act.

(b) The Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. There shall also be in the Agency a Deputy Director appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall act as, and exercise the powers of, the Director during his absence or disability. The Director shall prescribe the regular duties to be performed by the Deputy Director.

(c) (1) The Director is authorized to appoint and fix the compensation of such officers and employees, and prescribe their functions and duties, as may be necessary to carry out the provisions of this Act.

(2) The Director may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(2) Section 5314 of title 5, United States Code, as amended by adding at the end thereof the following:

"(58) Director, Vietnam Children's Care Agency."

(4) Section 5315 of such title is amended by adding at the end thereof the following:

"(95) Deputy Director, Vietnam Children's Care Agency."

(5) The Director may delegate any of his functions for such officers and employees of the Agency as he may designate, and may make such rules and regulations as may be necessary to carry out his functions.

(6) The Director is authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such advisory committees as may be appropriate for the purpose of consultation with and advice to the Agency in the performance of its functions. Members of such committees, other than these regularly employed by the United States Government, while attending meetings of such committees or otherwise serving at the reqeust of the Director, may be paid compensation at rates not exceeding those authorized to be paid experts and consultants under section 3109 of such title, and while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of assistance, as authorized by section 5703 of such title, for persons in the Government service employed intermittently.

(d) In order to carry out the provisions of this Act, the Agency is authorized—

(1) to adopt, alter, and use a seal

(2) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel, and the performance of the powers and duties granted to or imposed upon it by law

(3) to acquire by purchase, lease, condemnation, or in any other lawful manner, any real or personal property, tangible or intangible, use, and operate the same to provide services in connection therewith, and to charge therefor and to sell, lease, or otherwise dispose of the same at such time, in such manner, and to the extent deemed necessary or appropriate;

(4) to construct, operate, lease, and maintain buildings, facilities, and other improvements as may be necessary;

(5) to accept gifts or donations of services, money, or property, real personal, or mixed tangible or intangible;

(6) to enter into contracts or other arrangements or modifications thereof, with any government, any agency or department of the United States, or within any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(7) to make advance, progress, and other payments which the Director deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

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

(e) The Director shall, as soon as practicable after the end of each fiscal year, make a report in writing to the President for submission to the Congress on the activities of the Agency during the preceding fiscal year.

IMPLEMENTATION OF THIS ACT

SEC. 5. Within ninety days after the date of enactment of this Act, the President shall take such steps as may be necessary to carry out the provisions of section 4 of this Act and to initiate the program under sections 2 and 3 of this Act.

SEC. 6 (a) As soon as practicable, the President is requested to undertake negotiations with the United Nations, or such other multilateral organizations as the President considers appropriate, to have such organization agree to perform the functions described in section 2 of this Act. Any funds made available for the purposes of section 2 of this Act may be made available, as the President deems appropriate, to such organization to carry out such purposes.

(b) At such time as the President determines that the functions described in section 2 of this Act are being satisfactorily performed by the United Nations, other multilateral organizations, or nonprofit organization, the authority and responsibility of the Agency with respect to such functions shall cease to exist.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. In addition there are authorized to be appropriated such sums as may be necessary to assist the United Nations or any other multilateral or nonprofit organization to perform functions which would otherwise be performed by the Agency under this Act.

LIMITATION OF ADMINISTRATIVE EXPENSES

SEC. 8. Not more than 10 per centum of the funds appropriated to carry out this Act may be used by the Agency for administrative expenses.

NEW AID TO BANGLADESH

Mr. KENNEDY. Mr. President, after weeks of unconscionable delay, the administration announced over the weekend that it is finally prepared to commit the remainder of the Humanitarian Relief Funds for Bangladesh voted last session by Congress.

For those of us in Congress concerned that each day of delay in expending already available relief funds caused an unnecessary day of human suffering in Bangladesh, the administration's announcement comes as welcome news. Today I should like to commend the Agency for International Development in now pledging to move forward promptly in implementing American aid commitments. For too long our lack of recognition of Bangladesh—our national leadership's rationalizing of its foreign policy tilt in South Asia—was allowed to impede America's role in contributing to the massive, emergency relief needs of the Bengali people. No further such delays should now be expected or countenanced.

I know I speak for many Senators in commending the administration for committing $130 million in relief assistance to Bangladesh—the remaining portion of the $200 million appropriated by Congress last year. I hope we in Congress will be prepared to allocate whatever additional funds may be necessary to enable the United States to fulfill its humanitarian obligations toward those men, women, and children suffering disease and hunger in Bangladesh.

Mr. President, I ask unanimous consent that the press announcement of the $130 million grant to Bangladesh and three related editorial articles be printed in the RECORD.

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

[From the New York Times, Apr. 9, 1972]

U.S. PLANS TO GIVE DACCA $130 MILLION MORE IN AID

(By Benjamin Welles)

WASHINGTON, April 8.—The United States is planning to commit $130 million in relief assistance to Bangladesh before the end of the current fiscal year on June 30, senior Administration officials have said.

Meanwhile, there were indications from reliable sources that a joint World Bank-United Nations survey of urgent reconstruction needs in Bangladesh might lead to a call on the United States and other international donors for an additional $600 million for the coming year.

The United States formally recognized Bangladesh on Tuesday. Secretary of State William P. Rogers, in a statement distributed to the press, said that the United States intended to be "helpful" as the new nation of 70 million Bengals "face its immense task of relief and reconstruction."

Maurice J. Williams, Deputy Administrator of the Agency for International Development, which is coordinating American relief efforts, said in an interview that the $130 million still to be committed represented the remainder of the $200 million appropriated for Bangladesh relief by Congress on March 8.

BREAKDOWN OF $70 MILLION

The $70 million already committed, he said, included $31 million recently given to the United Nations in cash for immediate needs in the area; $4 million being used to buy United States trucks requested by the United Nations and $7 million granted to

various private American voluntary agencies operating in Bangladesh. In addition, Mr. Williams said, $27 million had previously been provided for Bengali refugees in India.

Mr. Williams said that aid officials would confer here on Tuesday with Russell P. O'Quinn, a former Douglas aircraft test pilot who flew relief supplies from São Tomé Island into Biafra during the 1967–70 Nigerian civil war.

Mr. O'Quinn, who heads the Foundation for Airborne Relief, a non-profit organization based in Long Beach, Calif., recently visited Bangladesh.

Aid officials said that they were preparing to grant Mr. O'Quinn $1.5-million to launch an emergency food-dropping program in Bangladesh using two Boeing C–97 cargo planes, two Bell helicopters and two Cessna–185 amphibians with pontoons. Mr. O'Quinn said in an interview that his pilots would use a "double-bag" food-dropping technique devised in Laos by Air America, a Central Intelligence Agency unit.

The inner bag, packed with 70 pounds of rice or other food grains, bursts on impact, but 90 per cent of the food is retained by the outer looser bag of tough plastic, he explained.

Since the United Nations issued a world appeal Feb. 18 for $440-million for urgent relief needs in Bangladesh, more than $400-million has been donated. About $115-million of this has been pledged by the United States in food grains and other forms, aid officials reported.

[From the Baltimore Sun, Apr. 10, 1972]

SOME SOUTH ASIAN FACTS ACKNOWLEDGED

It has been obvious for many weeks that the first act in this country's necessary readjustment of its policy toward South Asia had to be a formal diplomatic recognition of the new country of Bangladesh. Now, at length, that move has been taken, leaving China the only major nation not to have extended recognition.

The administration, we have been told, delayed the decision to establish an embassy in Dacca while it conducted a review of the South Asian situation in the aftermath of the December war for which Bangladesh emerged independent. We may trust that the review was thorough, and that it took full account of the realities of the subcontinent—as American policy before and during the war did not take account.

The fact is that even before the war any notion of a balance of power in South Asia was out of the question. In terms of human and material resources, stability, administrative organization and political purpose India was simply South Asia's dominant nation, nor could American and Chinese support for Pakistan suffice to make it otherwise: the inevitable outcome of the war demonstrated that.

Now India is not merely dominant but overwhelmingly, unarguably so, and besides that there is the new Bangladesh, closely allied with India though proclaiming independence in its own right. Bangladesh is a nation of many troubles, but it is a nation, and deserves international acknowledgement as such. American recognition would have come better earlier, but still its coming now will help by a bit to ease the tensions and difficulties in a region where they urgently need to be eased.

[From the Washington Post, Apr. 8, 1972]

THE ASIAN SUBCONTINENT: WHAT'S NEXT?

American recognition of Bangladesh, though tardy, should improve the prospects both for a quick generous flow of relief and for progress toward a political settlement on the subcontinent.

Relief needs of Bangladesh are staggering. In the best of earlier times, its condition was desperate; Pakistani misrule and the ravages of war left the land, economy and bureaucracy in shambles. Prime Minister Mujibur Rahman's exertions and international alms have had some effect, but much more must be done at once. Of $200 million appropriated by Congress for Bangladesh in 1972 aid, some $130 million remains unspent. It took the administration a full six weeks to answer the United Nations' emergency appeal of Feb. 16; with recognition of Bangladesh, no further such delays can be countenanced. Fortunately, the World Bank is expediting plans by which American and other contributions can be put to effective use. News accounts which detail Bangladesh's real and large difficulties should not be allowed to obscure the degree of recovery it has already attained or to induce a general spirit of despair.

As a multiple loser in the war—it lost East Pakistan, it lost fragments of territory in West Pakistan and Kashmir, and it lost its national rationale as a *Moslem* state—Pakistan faces difficult (and different) political problems in dealing with India and Bangladesh. India first:

Having won the war, India wants to settle finally the question of Kashmir, which is the Moslem region divided and disputed with Pakistan since 1948 and the issue which has sustained their antagonism all that time. If Pakistan were now to accept (and later to recognize) largely Moslem Bangladesh, India figures, then Pakistan would in effect yield its religious claim to all of Kashmir. In return, Delhi hints, it would abandon *its* long-held legal claim to all of Kashmir. The pre-December cease-fire line, "rectified" in some measure, would then become the international border, in India's view, and peace would reign. To induce Pakistan to agree to this plan in the summit talks Mrs. Gandhi has now indicated she seeks, India is holding both the territory it took in December and 93,000 Pakistani soldiers it captured in now-Bangladesh. Whether Pakistan's President Bhutto has the will to consider such a plan, or the strength to accept it, is crucial and unclear.

For the moment he is agitating for the return of the POWs on "humanitarian" and atmospheric grounds, and he is attempting something of an end run around India to Bangladesh. He offers (1) an immediate grant of 100,000 tons of rice (Mujib rejected it); (2) resumption of trade especially in Bengali jute and tea and Pakistani rice; (3) the possible return of some 28,000 Bengali soldiers, plus countless other skilled Bengali civilians, who happened to be in West Pakistan when the December war broke out; (4) a potential haven for the threatened Bihari minority in Bangladesh; and (5) the prospect of a relationship which Bangladesh could use to ease India's warm but tight embrace. In any bargaining that might develop with India, moreover, Pakistan also has some Indian territory (taken in December) and, of course, its claim on Kashmir to play.

Outsiders are hard put to grasp these issues, let alone solve them. What is essential, and not easy either, is for the United States to avoid moves that might be seized on by one party or another as an unwarranted intervention in the subcontinent's own tortuous political processes. The time for "tilt" and balance-of-power activism is past. This is a moment for Washington, in international company, to get cracking on relief and on resumed development efforts, and to ensure on the political side that its hand is as light and deft as can be.

[From the New York Times, Apr. 9, 1972]

BANGLADESH—WE'LL GIVE THEM SOME TIME BUT NOT MUCH

(By Sidney H. Schanberg)

NEW DELHI.—It was a deliberately low-key affair. Within the State Department edifice in Washington last Tuesday Secretary of State William P. Rogers left it to an aide to announce United States recognition of the new nation of Bangladesh, formerly the eastern wing of Pakistan. Mr. Rogers was himself upstairs having lunch with the Pakistani Ambassador—apparently to sweeten the medicine.

The ambivalence of the episode reflects the seeming ambivalence of the Nixon Administration's attitude as it steers its way out of the wreckage of the pro-Pakistan policy it followd in the Indo-Pakistan conflict last year—a policy that left the 550 million people of India angered and the 75 million people of Bangladesh puzzled.

With Washington having waited nearly four months to recognize Bangladesh, after 56 other nations had done so, it was to be expected that the reaction on the subcontinent would be something less than handsprings. Indian officials called it welcome, though belated. The Bengalis were somewhat more enthusiastic, and the Bangladesh Foreign Minister, Abdus Samad, said he hoped that with recognition the United States would make "some contribution to the maintenance of peace in the region."

Most Bengalis—a romantic race whose history books on America talk glowingly of George Washington's fight for independence and Abraham Lincoln's struggle for Negro rights—were pleased and relieved by the American recognition move. Though grateful for the support they have received from India and the Soviet Union during their year-long struggle and afterward, they were getting a little nervous about the possibility of becoming too dependent on these two powers. "This will help us to reassert ourselves," said one official. Despite this hope, it does not appear that President Nixon is making a turnabout in his pro-Pakistan policy or is about to launch a big campaign to counter the growing Soviet influence in India and Bangladesh. He still has not resumed economic aid to India, cut off during the December war. Many Indians interpret this as an attempt to punish Prime Minister Indira Gandhi for not behaving toward Pakistan as Washington told her to. In contrast, Washington has signed several new aid commitments to Pakistan since the war.

American humanitarian aid to Bangladesh has exceeded $100-million so far, second only to India's contribution—but since it has all been channeled through the United Nations relief program, it has had no political impact as American aid. A hint that this might change came as the State Department spokesman was elaborating on the recognition announcement. He said: "We will be looking at ways we can continue to assist, through the United Nations and otherwise."

Some American diplomats suggest that the best course in Bangladesh is to be generous with humanitarian aid but not to become too involved politically—in short, let the Russians bear the onus for any inadequacies in foreign aid and any political unrest that follows.

Unrest is already stirring in Bangladesh, stemming in large part from the expectation of many Bengalis that with independence, their lives would suddenly and dramatically improve. Instead with the economy flattened by the guerrilla struggle and the war, they find that there are fewer jobs than before, less food, higher prices and no government relief program big enough to tide them over.

The government is disorganized. Some politicians are taking advantage of the disarray to grab off lucrative contracts, occupy businesses vacated by West Pakistani owners and profiteer in food and other relief goods. Lawlessness is growing, as hoodlum and warlord elements with guns left over from the guerrilla struggle operate openly in some areas.

The overburdened and exhausted Prime Minister, Sheikh Mujibur Rahman, desperately needs the experienced Bengali technocrats, civil servants and soldiers who were

among the several hundred thousand Bengalis caught in West Pakistan at the time of the war. The Pakistan Government, however, apparently wants to hold them for negotiating leverage at eventual peace talks.

Such talks moved closer last week as India and Pakistan, with the Russians apparently acting as a catalyst, indicated they were making arrangements for pre-summit negotiations. But repatriation of the Bengalis could be a long way off, and the meantime, Sheikh Mujib continues as a virtual one-man government—partly out of choice and partly because of abdication of responsibility by other government officials.

Still, Bangladesh is not the "international basket-case" it has been called by some distant observers such as Henry Kissinger, President Nixon's chief foreign policy adviser. The technology exists to produce three big crops a year instead of only one, which could make the country self-sufficient in food. The area's natural resources have never been adequately explored and its fishing industry never developed. With a massive infusion of foreign aid and reasonably effective use of it, Bangladesh might be able to throw away the crutches it now needs.

But this is a tall order, and while the new nation struggles for some semblance of order and stability, its people become impatient with the government. There is already talk in some intellectual circles—so far, only talk—of a "second revolution."

"We will give them some time," said one student, "but not much more time."

[From the Evening Star, Apr. 6, 1972]

RELIEF FOR BANGLADESH

American recognition of the new state of Bangladesh (formerly East Pakistan) should mark the beginning of a major relief effort for that impoverished and endangered nation of 75 million. The long overdue decision of the Nixon administration to establish diplomatic relations at the embassy level should also be followed up by efforts to reestablish friendlier relations with India in recognition of the new situation created in South Asia by the birth of Bangladesh.

Too much time has already been lost and the country is on the verge of economic and political chaos. Although Congress has appropriated $200 million in relief funds, only a fraction of that amount has actually been spent. Less than 100,000 tons of food have reached Bangladesh so far through the United Nations program. The projected food shortage this year is estimated at more than two million tons.

The political situation is growing more precarious every day. Sheik Mujibur Rahman, the nationalist Bengali leader who was thrust into power in the wake of the savage war for independence, is showing little talent in establishing order and setting up an effective government. The administration of the country is a shambles. Police are powerless in the face of bands of heavily armed former guerrillas and the political unity of the ruling Awami League is showing signs of disintegration.

Most serious of all, perhaps, is the danger of a new bloodbath between the Bengali majority and some 1.5 million Urdu-speaking Biharis, many of whom sided with West Pakistan during the recent fighting. Already, despite Sheik Mujib's call for tolerance, there have been ugly incidents in which hundreds if not thousands of Biharis have been slaughtered. Any incident, it is feared, could set off widespread rioting between the two communities.

Quite obviously, nothing that the United States can do in the way of relief supplies and diplomatic recognition will provide any guarantee against impending disaster in Bangladesh. It is, however, the only nation besides India with the resources to make a significant contribution. And a start should be made without further, needless delay.

IMPROVING SCHOOLS

Mr. ALLOTT. Mr. President, the New Republic for April 1 contains an article which packs more truth—some of it unpleasant—into brief compass than anything I have recently read on the subject of education policy.

The title of the article is "Improving Schools," and the author is Martin Mayer, a widely respected writer on education policy.

I commend the article to the attention of every Senator and ask that it be printed in the RECORD.

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

[From the New Republic, Apr. 1, 1972]

THE SHAM OF INSTANT EQUALITY—IMPROVING SCHOOLS

(By Martin Mayer)

NOTE.—Mr. Mayer is the author of The Schools and Where, When and Why, Social Studies in American Schools.

When I was chairman of a New York City local school board a few years ago, our district had a busing project that brought children in the lower grades from their East Harlem homes to the greater achievements of Yorkville. It was a small, complicated project, involving joint PTA's for the sending and receiving schools, new academic programs to short-circuit teachers' beliefs about what children should be able to do at this level, a little rigging of the test scores reported to the teachers, etc. The project did some good—not much, but some—and except for a handful of sophisticated Puerto Rican parents who hated to see the best black pupils go out of their schools (the Puerto Ricans wouldn't bus) it was popular in East Harlem.

Nevertheless, after one board meeting I was approached by a politically oriented caucus, not so much angry as nasty, demanding an end to asymmetry. Fortunately, they phrased their position in a way that invited a snappy answer: "Why," they demanded, "is it always our children that ride the bus?" I said, "because they're disadvantaged. One of their disadvantages is that they ride the bus." I report as a matter of fact that in my remaining two years as a local board chairman neither the argument nor the demand was heard again. Truth hurts; but it answers real questions.

The case for busing children to schools that their parents and the world at large believe to be better schools is an overwhelmingly strong case. The case for busing children to schools that their parents and the world at large believe to be poorer schools is an extremely weak case. There is some reason to believe, on the basis of the Coleman Report, that the children of low-income, ill-educated parents will on the average do somewhat better in school if they are exposed to the more invigorating air of classrooms dominated by the children of higher-income, better-educated parents. The same report gives evidence (much less frequently cited) that children from more fortunate homes will on the average do worse in school if they are a minority group in classrooms where the air is that of the slums.

Justice Holmes once observed that the reward of military rank is not a bigger tent, but command. The rewards of a better income and better education are a wider range of options. Even elected legislatures cannot change this fundament of social existence—and do not try, because in the process of writing law legislators typically look forward to the probable effects of what they do. The notion that courts can write such laws and make them stick should not be entertained for a minute by anyone seriously interested in improving society. Judges have neither the resources nor the habits of mind to predict intelligently the results of their decisions; they are hired and trained to look backward, toward the facts of a given case. Whether they are sentencing convicted felons or assessing damages for liability, their capacity to find proper remedies is notoriously slight. And even the most book-bound lawyer cannot really believe, if he thinks about it, that a society is defenseless against its courts.

A recent issue of the OEO magazine *Opportunity* featured an article on the legal service office that fought and won the case of *Serrano v. Priest*, which held that the financing of schools by local property taxes was unconstitutional because it deprived residents of poorer districts of equal educational opportunities. The lawyer in charge of the case speculated that it might turn the whole country around—if parents could not hope that by working hard and making money and moving to the suburbs they could do something special for the future of their children, then they might stay in the cities and stop being racists. But the difference between successful and unsuccessful schools is not usually money—in fact, the equalization of educational expenditures throughout New York State would *reduce* the per-pupil budget in New York City. And even if *Serrano v. Priest* were responsive to the real problems, the idea that so fundamental a drive as the desire to give one's children a better break can be frustrated by a court decision—or, indeed, *should* be frustrated in a healthy society—is ultimately not only preposterous but (if I may say so without offense) childish.

We have lived through an evtraordinarily dispiriting decade in education. A great deal that in the Kennedy days we had believed could be done quickly now seems long, dreary years away. The failure of university administrations to think through the nature and extent of their resources has loaded higher education with a burden of transparent fakery that has made at least secret Jensenists of most faculty and of more students than anybody cares to admit. Of the remedies proposed in the early 1960s, only two remain plausible: full-time institutional control of students from educationally hostile neighborhoods (*i.e.*, boarding school; or, in later life, the army: Project 100,000, little noticed, has educated more dropouts than all the school systems put together); and tutorial assistance (by nonprofessionals, paraprofessionals or older students: each-one-teach-one produces better measurable results than group instruction in the hands of any but the best teachers).

The educational impact of Head Start has been invisible; the educational impact of community control, bilingualism and race pride, has been fairly consistently negative; the educational impact of integration has been fairly consistently positive, but minor. Even in the best integrated situations, the difference in academic achievement between the middle-class white eighth-grader and the black welfare eighth-grader is likely to be three years, and such gaps cannot be concealed. The brief period in which blacks felt themselves honestly equal to whites is coming to an end all over the country, in self-resegregation and despair, largely because of the stress placed on education. The horror is perceived by radicals, who seek to exorcise it by abandoning schools altogether. The educators themselves, reviving their Uriah Heep attitudes of 20 years ago, ask again whether it's really so important that all children learn to read.

Much of this seems to me genuinely tragic. There is no reason to believe that we cannot, in segregated or integrated situations, bring much more of the low-income population

to a level of reasonable competence in reading—if we remember that competence is our target. And there is every reason to believe that the slum child who does not go to school, or does not have demands made upon him there, will be doomed to a disastrous life in this or any other society. It is the tone of the school, not the simple physical presence of middle-class children, that must be credited with the gains Coleman found from integration. Since the late 1960s, we have been sacrificing that tone everywhere, with appalling results.

We need ways to keep schools from dominating the future chances of students (I would like to see a return of professional licensing through apprenticeship, and a law requiring large businesses to hold, say, ten percent of the places in management training programs for applicants who never went to college). We need tests that measure more aspects of human ability than are now measured by our intelligence, aptitude and achievement tests. On the social front, we need ways to insure that middle-class blacks get the rewards of having made it, and we need maximum feasible opportunity for upward mobility in occupation, residence and education.

But the best that can be given is opportunity; the burden will continue to rest on the Negro community, because there is no way to transfer it. Governments cannot legislate and courts cannot mandate results. It may well be, as I had occasion to observe a decade ago, that the benefits of major educational effort can be gathered only by the children of those who participate in the effort; even so, the effort is worth making. The lawsuits and committee reports and books calling for instant equality must be seen for what they are: attempts to avoid making the effort. To the extent that they also seek to punish society for not doing what cannot be done even with effort—and there is a great deal of purely punitive purpose behind much of what the activist lawyers are attempting—they will be fearfully counterproductive. They already are.

STATEMENT BY CYRUS S. EATON ON RADIO LIBERTY AND RADIO FREE EUROPE

Mr. FULBRIGHT. Mr. President, Mr. Cyrus S. Eaton, one of the best informed men in our country on the affairs of Russia and Europe, and one of our most successful industrialists, has recently made a statement regarding the continuation of Radio Free Europe and Radio Liberty. Because I think the statement is well worth the attention of Senators I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT BY CYRUS EATON

The appeal to President Nixon by eight members of the West German government underlines the desirability of closing down Radio Free Europe and Radio Liberty. Location of these sources of American propaganda in West Germany constitutes a considerable source of embarrassment to Chancellor Brandt, and impedes his efforts to establish friendship with the countries of eastern Europe.

In my frequent visits to these communist nations, I have made a special study of the effect of broadcasts from the two stations. As could naturally be expected, the statesmen, press and radio are offended, because their unreliability is strongly implied by the broadcasts. The vast majority of the people themselves are similarly affected. Since the regular broadcasts of BBC and French stations are readily available, it is not as if they had no contact with the outside world.

The origin of the broadcasts in Germany, moreover, serves as a constant and unfortunate reminder to eastern Europeans of Hitler and his savage campaigns against their countries. Instead of making converts, therefore, the broadcasts stir up anger and bitterness toward the United States, which finances them, and resentment toward West Germany, where the stations are located.

Let us ask ourselves how we would feel if the Soviets set up a special station in one of our neighboring countries in an attempt to arouse the American citizenry, or some racial or ethnic segment of it, against its government and media. Not only would the politicians and the press and radio of the United States be deeply resentful of the implication of their unreliability, but the American public itself would also be in an uproar of protest against such obvious propaganda. The American people would certainly not for one instant put up with being told what to do and how to do it by an outside power of opposing ideology.

The proponents of our propaganda stations go after Senator Fulbright hammer and tongs, on the grounds that he is trying to deny the people of eastern Europe access to the truth. Actually, he is completely right in his recognition that these radio programs are unwise and counterproductive and, in addition, place a further burden on the American dollar, already in serious trouble.

The flight from the dollar continues on an alarming scale. America must give up the luxury of overseas spending to tell the rest of the world what to do and how to do it. A good place to start is by terminating the folly and expense of Radio Free Europe and Radio Liberty.

IMPACT OF RADIO LIBERTY ON RUSSIAN SOCIETY

Mr. McGEE. Mr. President, the Washington Post of Sunday, April 9, 1972, contains an interesting analysis of Radio Liberty and its impact on Russian society. The article was written by Susan Jacoby, a former reporter for the Post, who returned to this country in 1971 after a 2-year stay in the Soviet Union.

The important aspect of the column is that the author is presenting a perspective of Radio Liberty based upon her personal experiences in Russia and the value the broadcasts of this station have for the people of that country.

I believe it worthwhile to read this excellent presentation of Radio Liberty because it comes from an individual who was in a position to rationally and realistically analyze the impact of the station on Soviet society—a person whose observations are not tied to personal prejudices.

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

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

[From the Washington Post, Apr. 9, 1972]

RADIO LIBERTY AND THE RUSSIANS

(By Susan Jacoby)

On a snowy day during the winter of 1971, an unidentified young man from a small village arrived at the Moscow apartment of Andrei Amalrik, author of "Will the Soviet Union Survive Until 1984?" and "Involuntary Journey to Siberia." The young man had heard on the radio that Amalrik had been sentenced to three years in a labor camp, and he wanted to do something to help.

Because Amalrik wanted comments from readers, his home address had been broadcast several months earlier when his books were read over Radio Liberty. The young man knocked on the door and presented a sticky honeycomb to Amalrik's wife, Gyusel. He told her she must take it to her husband in camp, since honey would help a prisoner keep up his strength. Then he disappeared, leaving no name or address.

The young stranger is one of the many Russians who listen to Radio Liberty. (It is impossible to determine how many listen, although millions of short-wave sets can receive the broadcasts despite intensive jamming.) What these Russians hear and how they react are questions that Sen. J. William Fulbright (D-Ark.) has never answered in his fight to close down both Radio Liberty and Radio Free Europe as "Cold War relics." Nor have supporters of the two stations shown much awareness of what the broadcasts really mean to people in the Soviet Union and Eastern Europe.

Radio Liberty means different things to different Russian listeners, depending on their interests and political orientation. Alexandria I. Solzhenitsyn, Russia's greatest living writer, said recently, "If we ever hear anything about events in this country, it's through them." Solzhenitsyn, who made the statement in an interview with Moscow Correspondents of The Washington Post and The New York Times, had just heard a Radio Liberty report of an attack on him by Yaroslav V. Smelyakov, an official of the writers union which expelled the Nobel Prize-winning novelist in 1969.

The Smelyakov letter was an indirect official response to a sad and stinging lament Solzhenitsyn had written in memory of his friend and former editor, Alexander Tvardovsky. It was published in the West and broadcast back to the Soviet Union by Radio Liberty. The exchange, a minor literary quarrel from the vantage point of an American audience, is highly significant to Russians who care about literature—and most of the people who listen to foreign radio stations care a great deal. Smelyakov implied that Solzhenitsyn, as a writer proscribed by the authorities, had no right to eulogize Tvardovsky, who received many official honors during his lifetime. The attack neglected to mention that Tvardovsky was forced out of his job as editor of the magazine Novy Mir primarily because he championed Solzhenitsyn so steadfastly.

LETTER FROM A LISTENER

To many Soviet listeners, Radio Liberty is simply a source of outside information with which they may or may not agree. One man wrote Radio Liberty a letter vigorously disputing the station's assertions that collective farm workers have a low standard of living in the Soviet Union.

"My brother works on a *kolkhoz* as a machine operator," explained the letter, which was addressed in a chatty tone to a female broadcaster. "He receives 120 rubles, his wife 80 rubles and his mother a pension of 30 rubles. He personally owns a large garden, two cows, two piglets, some birds, chickens, ducks, geese and 15 bee-hives." (One ruble equals approximately $1.11 at the official exchange rate.)

While Radio Liberty seldom receives letters praising Soviet life, its audience does not consist entirely of people who are deeply dissatisfied with their country. A professor of French literature at a Moscow university once told me, "I don't always agree with these broadcasts, but I do believe it's important to hear other views of the world and of life. I think it is sad that we don't have these different views in our own newspapers, because I believe this kind of discussion would strengthen rather than hurt our society."

Radio Liberty attempts to provide a wide variety of news about the Soviet Union and the outside world that is not available in the Soviet press. However, broadcasts of clandestinely published *Samizdat* literature anger the authorities more than news broadcasts. Lengthy novels are read in half-hour installments over a period of several weeks: The radio thus enables a widespread audience to hear literary works it cannot read because of Soviet censorship.

All of the best Russian novels and nonfiction works of the 1960s have been read or discussed extensively on Radio Liberty. They include all of the Solzhenitsyn novels banned by Soviet authorities since 1964: "Cancer Ward," "The First Circle" and "August 1914." Other major works read over the air have included Nadezhda Mandelstam's "Hope Against Hope," which describes her life with the poet Osip Mandelstam until his death in a prison camp in 1938; Vasily Grossman's "Forever Flowing," which deals with the feelings of a camp supervisor who returns to the outside world; both Amalrik books, and the uncensored version of Anatoly Kuznetsov's "Babi Yar."

"Babi Yar" was originally published by the Soviets in censored form in 1966. The uncensored version became available only after Kuznetsov defected in London in 1969. Russians who listened to the broadcasts of "Babi Yar" say they were particularly dramatic because the originally published portions were read in a flat announcer's voice and the parts cut by the censor were read by Kuznetsov himself. The censored paragraphs, which make up at least a third of the present book, dealt with subjects ranging from Ukrainian collaboration with Nazi occupiers during World War II to continuing anti-Semitism in the Soviet Union.

ARGUMENTS WITH THE PRESS

Radio Liberty also broadcasts many *Samizdat* works by Ukrainian writers in the Ukrainian language. They are not as well known in the West as Russian *Samizdat* writers but are even more important to the 49 million Ukrainians who make up the second largest ethnic group (after Russians) in the Soviet Union.

The station broadcasts 24 hours a day in Russian and intermittently in 18 other languages spoken by different nationality groups within the Soviet Union. Radio Free Europe broadcasts to Bulgaria, Czechoslovakia, Hungary, Poland and Rumania. Radio Liberty now has a yearly budget of $12 million and 920 employees; Radio Free Europe has a $21 million budget and approximately 1,600 employees.

Radio Free Europe is better known in the United States than Radio Liberty because it still commands political loyalty and some financial support from Americans of East European ethnic origins. The two stations have completely separate business and editorial operations, through their funding is a single issue in Congress. Differences between their programming are substantial, and they reflect different political conditions in the Soviet Union and Eastern Europe.

Radio Free Europe tends to engage in running arguments with the official press in countries like Hungary and Poland, and the official newspapers often answer the broadcasts. Such dialogue is possible because the press in Eastern Europe is censored with a much lighter hand than the Soviet press. Russian newspapers and radio stations sometimes attack Radio Liberty, but they do not mention specific broadcasts: Any discussion of specifics would help spread news the Soviets want to keep quiet.

Radio Liberty devotes about a third of its coverage to international affairs and two-thirds to Soviet domestic issues. There is some overlap in international coverage, since the station often broadcasts Western wire service accounts or its own analyses of events that have been reported by official Soviet papers or the news agency Tass.

A DAY IN MARCH

On March 1, an ordinary news day, both Radio Liberty and Pravda covered the arrival of Sheikh Mujibur Rahman in Moscow to seek aid for the new state of Bangladesh. Another event reported by both sources was the killing of two Ulster defense regiment soldiers in Belfast. Radio Liberty generally devotes only brief commentary to news stories that are non-controversial enough in the Soviet Union to be reported in straightforward fashion by the official press.

On the same day, Pravda ran a Tass story from Washington reporting President Nixon's return from Peking; it was based mainly on American press commentaries. Radio Liberty aired a nine-minute world press review of the Nixon trip, giving more prominence to Western European press reactions. Another world press roundup dealt with new developments in the Middle East: Radio Liberty generally attempts to offset the Soviet position that Israel is the only aggressor.

News items reported by Radio Liberty that were not covered in the March 1 Pravda included:

Announcement of new exchange of scientist-lecturers between the Soviet Union and the United States.

Reaction by black Rhodesians to the proposed agreement between Great Britain and Rhodesia.

Introduction of food rationing in Chile.

Authorization of Soviet border guards to detain people in border regions for up to 10 days without giving official cause. The move was seen as an effort to stop border traffic in Soviet Central Asia, where the frontier is less closely guarded than the Soviet Union's western borders.

The showing of a Romanian film in Bucharest about life during the Stalin era.

A scheduled meeting between British Prime Minister Edward Heath and French President Georges Pompidou.

The forthcoming trial of a writer named Vladmir Maksimov, who is being held accountable for Western publication several years ago of his *Samizdat* novel, "The Seven Days of Creation." The broadcast suggested that Maksimov, who was officially published during the Khrushchev era, was really being punished because he had defended his former secretary, Vladimir Bukovsky. Bukovsky was recently sentenced to seven years in prison and five years in exile for his outspoken political dissent—especially his criticism of the use of psychiatric commitment against political dissidents.

THE PROBLEMS OF CENSORS

The importance of Radio Liberty can only be understood in light of the reasons for Soviet publication or suppression of individual news items.

The Maksimov news will probably never appear in the Soviet press, since it deals with political dissent. Accounts of political trials occasionally appear if the dissenter is important enough and a high-level political decision is made to portray his alleged offenses against the state.

The item about the Romanian film would also receive a virtually automatic veto, both because it deals with life in the Stalin era and because the Soviet government takes a less-than-enthusiastic view of Romanian President Nicolai Ceausescu's independent foreign policy.

News of an American-Soviet scientific exchange may have eventually appeared when it cleared the censor. The timing of Soviet news stories has no necessary relationship to when the event actually happens.

A meeting between President Pompidou and Prime Minister Heath is another "sensitive" topic because Moscow has opposed British entry into the Common Market. Fearing that a strong, united Western Europe might have undesirable influences on relations with the Warsaw Pact nations, the United States and even China, the Soviets tend to underplay news related to the Common Market.

Also on March 1, Radio Liberty carried news of a bill introduced by Sen. Hubert H. Humphrey (D-Minn.) to provide continued financing for Radio Liberty. The station has carried a running account of both sides of the controversy over financing for its own operations and Radio Free Europe.

Both stations immediately reported Fulbright's Feb. 17 Senate speech in which he said the administration wants to keep "this Cold War program on the books despite the fact that neither the American public nor the governments of Western Europe are willing to support such a continuation."

Tass did not report the Fulbright speech until three days later—a delay which caused guffaws among Radio Liberty and Radio Free Europe staff members. Delays in handling "sensitive" news are common because the Soviet censors must decide exactly how the stories are to be written. American criticism of U.S. government policy poses a particularly difficult problem for censors. since Russian readers might wonder how such public criticism could have been permitted.

THE LEGISLATIVE BATTLE

The stations have broadcast a complete history of their financing difficulties, beginning with the disclosure by Sen. Clifford Case (R-N.J.) that they had been covertly funded by the CIA since their establishment in the early 1950s. In the past year, the stations were financed under a continuing resolution that expired Feb. 22. The Nixon administration had sought to set up a nonprofit corporation that would administer the stations when the resolution expired.

Stymied by Fulbright's opposition as chairman of the Senate Foreign Relations Committee, the administration was forced to accept a compromise funding the stations only until June 30. The stations have considerable bipartisan support, and new legislation is expected to be introduced this spring. Radio Liberty noted in one of its broadcasts that only six senators voted against the present funding resolution.

Says one Radio Liberty staff member: "To be honest, I'd estimate our chances of getting continued financing at about 60–40. It's difficult to explain in our broadcasts that the Senate works in such a way that one man can use his position as chairman of a powerful committee to thwart the will of the majority."

Supporters of the two stations are even more worried about the administration's inclinations than about Fulbright's position. They feel the administration has not applied any muscle in Congress despite President Nixon's stated support for the stations. And they are afraid the President might regard ending the broadcasts as a convenient, politically unimportant goodwill gesture to make when he visits Moscow.

Francis S. Ronalds Jr., deputy director of Radio Liberty in Munich, home base for both stations, says the budget threat is "especially ironic at this time because we have an unparalleled opportunity to improve our programming in areas other than literature and political dissent." Ronalds was alluding to the Jewish emigration from the Soviet Union, which could make it possible for the stations to hire more native Russian-speakers with technical and scientific training.

"We have been weak on scientific issues that are of special concern to many members of the Soviet intelligentsia," Ronalds says. "Many of the more recent emigres are still interested in the Soviet Union, not in the old Cold War sense but in the sense that they believe in a free flow of ideas. We don't want people who hate the Soviet Union, because most of our listeners love their country and

many are committed Communists or socialists of one kind or another."

A DIFFERENT TONE

Samizdat is by no means the only source of Radio Liberty broadcasts. Researchers pore over little-known Soviet magazines for topics that would interest a wider Russian audience. Many of these topics are connected with science and economics. A new journal on ecology, for example, has an officially permitted circulation, of only 1,225; Radio Liberty is planning several programs on the more significant issues discussed in the magazine.

During my two years in the Soviet Union, I never met a Russian—including some party members—who felt that Radio Liberty was trying to overthrow or attack the Soviet government in the manner of the early Cold War years. The Library of Congress report on Radio Liberty and Radio Free Europe quoted Soviet specialists whose own analyses contradicted Fulbright's views. In the Soviet book "U.S. Radio in Psychological Warfare," published in 1967, Artem R. Panfiov wrote:

"In practice, propaganda for the overthrow of the Communist regime has almost disappeared from all American broadcasts to the socialist countries of Europe. Even Radio Free Europe no longer broadcasts such propaganda . . . The tone of the radio broadcasts has changed significantly . . . Direct interference in the internal affairs of one country or another in the form of all sorts of advice to radio listeners has almost ceased, and undercover propaganda has left the scene."

Conservative Soviet citizens often oppose Radio Liberty's contention that complete freedom of information should prevail in their country, but they, too, want to hear ideas that do not necessarily fit into the official Soviet version of reality. "After all," says one Soviet journalist, "you can always turn off the radio if you don't want to hear something."

PRESIDENT'S MESSAGE ON AGING: A DISAPPOINTMENT FOR OLDER AMERICANS

Mr. CHURCH. Mr. President, a few days ago, the President issued a long overdue message on aging, outlining this administration's "comprehensive strategy" for older Americans.

But for the 20 million persons now past 65 and the millions more nearing this age, his message can only be regarded as a distinct disappointment. His proposals fall far short of the stirring call for action at the recent White House Conference on Aging; and they can only serve to induce further frustration, despair, and outright cynicism.

As chairman of the Committee on Aging, I can only say that the President is fumbling away a historic opportunity to make 1972 a year of landmark achievements for all older Americans.

The year 1972 could be the year in which we eliminated poverty once and for all among the aged. It could be the year in which we fulfilled our commitment to provide genuine economic security for the later years of life.

It could also be the year in which we made serious inroads in solving the everyday problems of the elderly—in the fields of nutrition, housing, health care, transportation, and many others.

Or it could be the year in which the momentum generated at that Conference was squandered.

It could be the year in which we responded with "tokenism" to problems which cry out for far-reaching and comprehensive action.

Unless reversed, the latter appears to be the course the administration has chosen.

Nowhere is this more evident than in the area of economic security. Quite frankly, this is the fundamental and underlying strategy for coming to grips with the worsening retirement income crisis which now affects millions of older Americans. Unless major policy changes are instituted this deepening retirement income gap is likely to deteriorate even further.

This administration is willing to settle for a meager 5-percent boost in social security benefits, an increase which will not even keep pace with the rise in the cost of living. This is a far cry from the 25-percent boost recommended by the White House Conference. Even more disturbing, the administration's approach totally ignores some very real and basic facts of life:

More than 4.7 million older Americans fall below the poverty line.

If the hidden poor are counted, the poverty numbers for persons 65 and older swell to 6.3 million, or almost one out of every three senior citizens in the United States.

Poverty among the aged is on the rise for the first time in our history. From 1968 to 1970, the number of elderly poor persons increased by 100,000.

Social security benefits for the typical retired worker now amount to $1,596 a year, about $250 below the existing poverty threshold.

It was for these compelling reasons that I recently introduced an amendment to H.R. 1 to authorize a 20-percent increase in social security benefits. Already 29 Members of the Senate have joined me in sponsoring this badly needed proposal. And several others have indicated their strong support for an increase far beyond 5 percent.

With poverty on the rise for the elderly, a 20-percent social security increase is absolutely essential. Adding a few dollars every couple of years to the elderly's monthly social security check will simply not get the job done. A much more sizable boost is urgently needed if we are really serious about developing a sound and sensible income strategy for older Americans.

However, adequate retirement income is just one of many key needs in which the President's message on aging fails to respond to the White House Conference.

In the field of housing, his proposals offer no realistic hope for meeting the conference objective for 120,000 units per year. For 6 million older Americans who now live in dilapidated, substandard or deteriorating housing, the goal for a decent living environment will continue to be an impossible dream.

What is needed now is a genuine commitment to implement the White House Conference's national housing policy for older Americans. But the administration has failed to provide this leadership. Instead, it has openly opposed some of the very proposals—such as the establishment of an Assistant Secretary for Housing for the Elderly—sought by the White House Conference.

Additionally, it has exhibited a half-hearted commitment to the serious health care problems which continue to pose an intolerable drain upon the aged's limited pocketbooks. Quite clearly, our Nation can never assure true economic security in retirement until the threat of costly and catastrophic illness is resolved.

In response to this challenge, the White House Conference recommended that medicare should be broadened to include out-of-hospital prescription drugs, eyeglasses, hearing aides, dentures, and foot care. Yet, the administration has chosen to ignore every one of these suggestions.

In some cases, it has even turned the clock back—by proposing shortsighted cutbacks which can limit the quality and availability of care for the aged. One such example is the $7.50 daily copayment charge for elderly patients who are hospitalized from 31 to 60 days. This provision alone could conceivably add $225 to the health care bill of an aged person. Fortunately, however, the Finance Committee has decided to remove this provision from H.R. 1.

Finally, the administration has rejected the White House Conference proposals for a streamlined Federal apparatus to represent the elderly in the highest councils of government. Instead, it has presided over the dismantling of the Administration on Aging. Today AOA is a crippled and fragmented agency with few clearcut goals and little overall direction. And the net impact is that Federal commitment in the field of aging has been severely diluted.

Even a substantial increase in the funding levels for the Older Americans Act—welcome as it may be—will not solve these serious problems, as long as AOA's mission continues to remain murky and ill-defined. What is needed is a strengthened Federal structure which is effective, action-oriented, and responsive to the challenges of older Americans.

To meet this challenge, the delegates called for the adoption of a four-point plan:

First, establishment of an independent Office on Aging at the White House level to formulate policy and coordinate programs in the field of aging.

Second, creation of an Advisory Council to assist the independent office in a wide variety of capacities.

Third, elevation of AOA by placing it under the direction of an Assistant Secretary for Aging.

Fourth, establishment of the position of Assistant Secretary for Aging, or its equivalent, in all departments and agencies conducting operating programs for the elderly.

Yet, the administration simply proposes mild cosmetic treatment for AOA with increased funding levels.

The President's own Special Consultant on Aging, Dr. Arthur Flemming—who has fought over the years on behalf of older Americans—concedes that the administration's program for the elderly falls short of the recommendations of the White House Conference. This as-

sessment is discussed in an article published recently in the Washington Post. Mr. President, I ask unanimous consent that the article be printed at this point in the RECORD.

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

[From the Washington Post, Mar. 29, 1972]

NIXON PLAN ON ELDERLY FALLS SHORT, AIDE SAYS

(By Stuart Auerbach)

The White House's special adviser on aging, Dr. Arthur S. Fleming, acknowledged yesterday that President Nixon's program for the elderly falls short of the recommendations of a White House conference last year.

But, Fleming told a press conference, "The message indicates a continuous process is under way that will lead to more and more action as the weeks and months go by."

He said Mr. Nixon's special message Thursday "is definitely moving us in the direction set by the delegates" to last November's White House Conference on Aging.

Fleming said the delegates' recommendations identify "the cutting edge" of the issues facing the elderly. The President's message, Fleming said, shows motion in that direction.

The feelings of the 20 million Americans who are more than 65 years old are exceptionally important in 1972—an election year. They are among the nation's heaviest voters: 84 per cent of them are registered and 74 per cent of them voted in the 1970 off-year elections.

Fleming, Secretary of Health, Education, and Welfare in the Eisenhower administration, was chairman of the 1971 White House Conference on Aging.

He said its many recommendations—which are being released a little bit at a time—are under study in the White House by a special cabinet-level committee.

In two areas—nutrition and the construction of senior citizen centers—Fleming said President Nixon has come close to the objectives of the 3,500 delegates to the White House conference.

In other areas—especially increases in Social Security payments and the coverage of out-patient drugs under Medicare—the President and the delegates to the conference on aging are further apart.

Mr. CHURCH. Mr. President, disappointed as I am in the President's message on aging, I am still hopeful that the administration will change its present narrow position for older Americans. I am encouraged that this is possible because the administration has already reversed itself several times on many key issues in the field of aging—largely as a result of bipartisan congressional efforts. A good example is the recent enactment of the Nutrition Program for the Elderly Act, which the administration had steadfastly opposed for nearly 2 years.

Nevertheless, I am hopeful that the administration will yet be willing to work, in a spirit of bipartisan cooperation with Congress, to reshape and improve present policies for older Americans.

REFORM NEEDED IN CRIMINAL JUSTICE SYSTEM

Mr. HUGHES. Mr. President, the American system of criminal justice is conceded to have lost most of its effectiveness in a mire of administrative delay and archaic notions of how to deal with the criminal.

A system that does so little to enhance respect for the rule of law or to salvage the lives that are broken by crime is in critical condition—in need of emergency resuscitation, intensive care, and long-term provisions for recovery.

Last Saturday, a planning group of the National Democratic Policy Council released its report on the need for reform of the criminal justice system in this country. The report is one of several prepared for consideration of the platform committee of the Democratic National Convention, and is the product of the work of 37 citizens whose combined knowledge of the forces at work on our courts and prisons, and in the lives of those who resort to crime, is very extensive.

Because I believe the report contains some vital insight that I am sure will be of interest to Senators, I ask unanimous consent that it be printed in the RECORD.

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

REFORM OF THE CRIMINAL JUSTICE SYSTEM

The planning group on reform of the criminal justice system held a public hearing on October 26 and 27, 1971 in Washington, D.C. The two-day session brought together an unusual panel of experts—lawyers, recovered addicts, law enforcement officers, physicians, current and former prison inmates, a former U. S. attorney general, psychiatrists, a mayor of a major metropolitan city, prison wardens, and U. S. Congressmen—to face the issue of long-overdue fundamental reforms in the American criminal justice system.

In his opening remarks, Senator Harold Hughes (D-Iowa) called for an end to "temporizing, tinkering and face-lifting" efforts to reform the criminal justice system. Hughes asked:

"To what extent do the notions of retribution that have conditioned our system of crime and punishment since the Hammurabi Code, remain justifiable in light of our present understanding of human behavior? Will we ever make significant progress on the drug front as long as people equate drug abuse with moral weakness and criminal inclination?

"Thoughtful citizens throughout the land recognize the imperative need for major change and reform in the various categories of our system of law, order, and justice. Innumerable studies have been commissioned, reports have been filed, and recommendations have been made. Yet reforms in this top priority area continue to lag.

"It is no secret to any of us that reform in these areas has been generally half-hearted and piecemeal because of fear of political reprisal. In view of the tragic failures of the past, it is my conviction that the hour of truth has arrived when an honest exposition of the realities will not be a political liability."

Former U. S. Attorney General Ramsey Clark spoke of the future without change in attitudes toward crime:

"I think we can reduce crime. Society has no more important challenge because crime is human conduct and more than any other activity of people it reflects the moral character of a nation. It is not a question of police forces against criminal forces; it's a question of people. When you phrase it in terms of police forces against criminal forces, you are emotionalizing and dividing and feeding the fear. There are causes of crime and unless we address ourselves to the causes and seek to reduce them then we cannot hope to substantially and permanently prevent or reduce the incidence of crime in America."

PERSPECTIVE

The problem of crime in America is real, immediate and fundamental. Its costs to the nation—direct and indirect, tangible and intangible—are staggering. Nearly three quarters of a million victims of violent crime in 1970. More than 15,000 murders. Billions of dollars of property loss.

The indirect, intangible costs are even more ominous. A frightened nation is not a free nation. Its citizens are prisoners, suspicious of the people they meet, restricted in when they go out and when they return, threatened even in their own homes. Unless government at all levels can restore a sense of confidence and security to its people, there is the ever-present danger that alarm will turn to panic, triggering short-cut remedies that jeopardize hard-won liberties.

Several general observations are appropriate at the outset:

First, the impact of crime in America cuts across racial, geographic and economic lines. The highest rates of assault and robbery are found in the inner cities. The chief victims of crimes of violence in America are the poor—black and white. But if the slums of America have the highest concentration of crime, there is no escape in the suburbs or rural areas of the nation. White crime increased by 9.2% in our cities in 1970, by more than 12% in our suburban and rural areas.

Second, hard-line rhetoric, pandering to the emotionalism of the moment is as futile as it is insidious. There has been too much rhetoric, threats and intimidation and too little commitment to reform. There are no simple solutions to problems as intractable as crime, drugs and prisons. A thorough and total revamping of our criminal justice system is necessary to reverse the present conditions.

Third, solutions must be sought that protect our people without undermining fundamental liberties. Stop-gap measures such as preventive detention and "no-knock" entry only serve to aggravate the problems of crime and drug abuse. The fact that they have been little used is evidence of their superficial quality as law enforcement tools The ultimate objective of a free, less threatening society is not advanced by police-state measures that substitute one form of tyranny for another.

Fourth, the problems of crime and drug abuse cannot be isolated from the social and economic conditions that give rise to them. Although this summary deals primarily with the steps that must be taken to alleviate the costly results of crime and drug abuse, the planning group recognized that any lasting solution to these problems must first deal with the fundamental causes of such behavior: poverty, discrimination, inadequate housing, insufficient jobs, unlivable cities and depressed rural areas, social and political institutions in upheaval.

LAW ENFORCEMENT

The planning group recognized and commended the dedication of the men and women law enforcement officers who, day in and day out, respond to the words, "call the cops" and deal firsthand with the human realities of the victim and the perpetrator of the street crime, the family fight, the drug overdose victim, the runaway child, the traffic jam and the bar room brawl. The complexity—and the danger—of police work requires a combination of brains, skill, education, human understanding, courage and commitment that no other profession demands.

The difficulty and challenge of the police job requires that citizens and police work together to make the police service as effective as possible, not only to better deal with the critical national problem of crime, but also to deal with the complex of other peacekeeping and public service tasks that we call upon our police to perform.

Faced with the problems presented by the rapidly growing amount of crime in America, it is easy simply to cry out for more police. While in many jurisdictions more police are

desperately needed, we recognize that more police alone cannot deal with the problem of crime in its totality. Court delay, the ineffectiveness of our jails and prisons, the epidemic spread of narcotic addiction, the frequent unwillingness of citizens to cooperate with the police and the quality of the police service itself are each important considerations in developing more effective efforts to reduce crime.

Recommendations

The recommendations that follow concern those actions that should be taken to improve the effectiveness of the police.

Most importantly we must foster those efforts that actively involve the citizens with the police in a joint effort to control crime. There should be more programs in which police and citizens join together to combat crime. We need more than "community relations" in a public relations sense. We need to engage the citizens in cooperation actively with the police, in helping the police in auxiliary roles, in taking those simple preventive measures that discourage crime and in active support of the police men and women and their leadership.

The upgrading of the police requires that we pay police salaries that match the difficulty of their jobs and that will attract highly qualified people into the police service. Educational standards for police must be raised. As police salaries are raised and citizen support increases, these standards can be raised and over time can vastly improve the image and quality of policing in America.

The police can only be fully effective when they genuinely represent the communities they serve. This means that more minority group members should be encouraged to enter the police service, that the police take the initiative in more effectively using women in a variety of law enforcement roles, that the technical skills of the computer scientist, the communications expert, the community relations expert, the training specialist, the lawyer, the personnel manager and many more be recruited into the police forces.

We must select as our police leaders those persons who fully understand the complex job of policing and who are sensitive to the changing social demands in our communities. Such persons can do much to lead the police in becoming more responsive to the needs of minority groups, of young people and of others, without whose support the police will not be fully effective in controlling crime. This same kind of strong police leadership is needed if we are to assure that high level of integrity that this important public trust requires.

We must provide the police with the technological resources to do the job. Effective policing requires advanced communications systems, computers and other facilities, and a system for regional coordination of law enforcement efforts.

The federal government can play a vital role in assisting state and local jurisdictions in upgrading police and improving police effectiveness in controlling crime. Federal funds should be used, not merely to buy police equipment, but to support police efforts to involve the citizenry in controlling crime, to bring into the police service new kinds of people and skills, to support those educational and training efforts that develop greater technical police skills, greater police management skills and greater skills in dealing with the human dimension of crime, conflict and disorder.

The police are in fact the "front line" in combating crime. The Democratic Party must firmly commit itself to supporting all efforts that will strengthen the capacity of the police to do their job and that will bring to the police the respect demanded by the importance of their job. We must continue to work at the local, state and federal levels to translate that support into dollars and other assistance. Such efforts will result in more effective crime control in America and in that quality of police service truly reflective of our basic democratic values.

JUVENILE DELINQUENCY

Juvenile delinquency statistics, according to former Attorney General Ramsey Clark, point out where crime first starts and where crime must first be stopped:

"Nearly the entire increase in arrests for the commission of serious crimes during the 1960's is accounted for by minors. Youngsters between eleven and seventeen composing 13 percent of the population are convicted in over 50 percent of all prosecutions for burglary, larceny and car theft. Half of all property crime is committed by people under twenty-one. Of all ages sixteen-year-olds are arrested most frequently.

"Youth is the time in life when those who live lives of crime take the road. Four out of five of all felonies are committed by repeaters—80 percent of all serious crime is committed by people convicted of crime before. The first crime was committed nearly always as a teenager. In federal youth centers nearly all prisoners were convicted of crimes that occurred after the offender dropped out of high school. Three-fourths came from broken homes.

"Professionals could find 90 percent of the children likely to become delinquent: those children who have no parents, have been beaten and abused, are not sent to school regularly, cannot read, or share a room with four people. We may have to live with the rest; we do not have to live with most. That we do tells us much about our character. It means that, knowing we are the ones who create criminals, we continue. Later, frightened, we seek to control them by force."

Recommendations

Prevention. The schools must undertake a new, vital and creative role in the vanguard of crime prevention in diagnosing behavioral problems and taking remedial action to insure that children headed for trouble are not forced out of school, onto the streets and into a life of crime.

Treatment. Juveniles who merely run away, play truant, or disobey a parent must not be relegated to large impersonalized isolated training schools to learn how to commit more serious and more violent crimes. Institutionalization makes more criminals out of juveniles than it unmakes. The premium on federal funds to states and localities must be on creating genuine community alternatives to sterile incarceration; juvenile service bureaus, special remedial education and job training, foster and group homes, counselling programs run by former juvenile and adult offenders.

Incarceration. There will always remain a small minority of youthful offenders who are, at the time of adjudication, so dangerous to themselves and others that they must be institutionalized. However, it is too often the case that society equates keeping juveniles out of sight until the age of majority with solving their problems. These youths are the most in need of concentrated services to change the attitudes and behavior that are the source of their problems.

Juvenile institutions should never house more than 100 children, should be built around an individualized treatment plan for each child, and the course of treatment should be enforceable by law. Today, the understaffed, brutalizing "holes," "youth centers," and "training schools," into which our children are now herded for everything from profanity to murder, commit offenses against these children for which a parent would be prosecuted; locking them in terrifying isolation; beating them; forcing them into situations where homosexuality is predictable; crowding them into unsafe, unsanitary and inhuman facilities; forcing them to associate with older, more experienced, offenders.

It should be recognized that anti-delinquency programs can never take the place of good prenatal care and birth control instruction, decent housing, medical care, a public education system that seeks to retain and help its children rather than to evict and forget its "deviant offenders," as well as a healthy job market providing an economic standard of living that makes life possible without drugs or crime.

DRUGS

A national commitment must be made to deal with the problem of drugs as it *exists*. Commenting on alcoholism and drug addiction, former Attorney General Clark said:

"You cannot beat heroin out of the bloodstream of an addict and you cannot cure alcoholism by picking guys up out of the gutter with broken wine bottles near them and throwing them in a tank, letting them go through a period, releasing them and then doing the same thing all over again."

Recommendations

Definition. The drug problem must be more carefully and clearly defined. Heroin addiction, barbiturate and amphetamine abuse, marihuana use and alcoholism are each different problems and their treatment has been developed and refined to varying degrees.

Treatment. The failure of this country to respond to the needs of those persons seeking specific kinds of help—help already proven to be efficacious—is tragic. For example, in New York City there are about 10,000 heroin addicts on a waiting list to enter the city's methadone program. A waiting list for an addict who wants to enter treatment now is not only an injustice to him but to his community as well. Property stolen by a single addict in one week may have a value of up to $1,000—an amount that would pay for his treatment with methadone for an entire year.

Rehabilitation. To understand what it is that a drug abuser or drug dependent individual seeks through treatment, we must first learn that such an individual is a sick person who should be dealt with as a whole person. To treat the whole person we must deal with his social needs as well as his drug dependency. In addition to dispensing medication and thereby eliminating the immediate needs for drugs, assistance must be provided to develop alternative life styles so that treatment eliminates the problem, instead of becoming a part of it.

Law enforcement. While developing new avenues to deal with drug addiction such as seeking out and closing off sources of abused drugs, we must not neglect to investigate the potentially new and more dangerous problems that may be created in the name of a "solution." When law enforcement efforts increase in areas where there are inadequate facilities to treat addicts seeking help, the net effect is to increase the price of drugs. The addict who might have entered treatment must now commit more crimes and possibly more violent crimes to support the new increase in cost of his habit.

Military drug abuse. Special attention must be paid to the extensive drug abuse within the Armed Services. The full ramifications of this involvement in terms of local communities previously relatively free of serious drug abuse will be increasingly felt as the level of American involvement in Southeast Asia returns more and more young men to the United States with unknown and unchecked levels of addiction. No careful follow-up has yet been undertaken. If we are to maintain any credibility in the eyes of our own nation as well as the world, a serious commitment must be made to care for returning servicemen addicted to drugs.

CORRECTIONS

Few institutions in America are as uniformly condemned and as consistently ignored as our existing prison system. Prisons represent a failure of philosophy, theory, concept, technique and execution. Individuals who commit crimes on the outside become criminals on the inside. Indeed, even the term "corrections" is a misnomer, recidivism rates run as high as 70 percent.

The impulse to reform must be stimulated not only by the most elemental principles of humanitarianism but also calculated self-interest. "The degree of civilization in a society can be judged by entering its prisons," noted Dostoyevsky. Ours are overcrowded, understaffed, and run-down human warehouses that embitter rather than rehabilitate, alienate rather than reintegrate, highten tensions rather than ease them.

Only when we as a nation recognize that our existing system *contributes* to escalating crime, will we be able to sustain the massive support necessary to achieve fundamental restructuring. Thus, the first priority of political parties and candidates for the leadership of this nation must be to undertake the public education necessary to change prevailing attitudes about our prisons and the human beings within their walls.

Alternatives to the present correctional policies discussed by the planning group and witnesses are summarized here briefly.

Sentencing

Pre-sentencing investigative procedures should incorporate increased probationary services, allowing offenders to remain in the community: finding and keeping employment, making restitution, supporting their families. Such an approach would break the patterns for many habitual offenders who seek refuge behind walls to avoid the responsibilities of daily living.

Mandatory minimum sentences should be abolished to allow the system sufficient flexibility and intelligence to release a man or woman at the psychologically proper moment.

Maximum sentences should be standardized and made consistent in order to reduce a major source of unfairness and bitterness.

Except where absolutely necessary, efforts should be made to *reduce sentence length* thus facilitating the supervised release of offenders before any benefits of incarceration are offset by overly-long imprisonment, with the accompanying danger of institutional dependency and total alienation from society as well as identification with the inmate subculture.

Incarceration

Greater efforts should be made in *classifying prisoners for maximum security prisons.* Such facilities should be restricted to those who are truly dangerous—estimated at 15–20% of all adult offenders—and not those who are merely outspoken.

The "big house" should be eliminated as we move to a system predicated on community-based correctional facilities. To the extent that higher security facilities are required, they should be limited to populations of no more than 100.

The *constitutional and human rights of offenders should be recognized:* the right to uncensored outgoing mail; the rights of due process for in-prison disciplinary actions; the right to decent meals, adequate sanitary and health facilities; the right to decent wages for in-prison work. To strip a man of his freedom does not require that we strip him of his dignity.

Realistic *therapeutic, education, alcoholism and drug treatment, vocational and wage-earning programs should be provided* in all correctional facilities, and, wherever possible, outside of them.

Emergency, educational and work-release furlough programs should be standard practice with eligibility for such programs based upon prison conduct and treatment needs.

The greatest emphasis and *encouragement should be given to support of "self-help" programs*—convicts, ex-convicts and the community each helping the other.

Correctional personnel must be upgraded with higher wages, more minority group employees in both custodial and rehabilitative jobs, and increased numbers of psychologists, educators, counsellors, diagnosticians and ex-convict paraprofessionals.

Post-incarceration

Massive *after-care services must be provided* so that the released offender is not "pushed out" and dumped on the street without any support.

Present civil disabilities for ex-convicts that erect barriers to their reintegration into society should be removed. These include automatic restoration of the right to vote, to hold public office, to obtain drivers' licenses as well as professional licenses, and to public and private employment. All registration of ex-offenders shoud be eliminated.

Every stage of the parole process—the granting of parole, the period of supervision, and the conditions governing that period, and the termination of parole—*should be opened to public scrutiny and thoroughly re-examined* with a view toward facilitating rather than frustrating re-entry into society.

SUMMARY

The focus of the planning group on reform of the criminal justice system was on the fundamental causes of street crime, drug addiction, and prisons. Although the planning group recognized that the courts are a major element of the criminal justice system in addition to law enforcement and corrections, the reform of the courts at all levels of government is of such a specialized nature that it would require the complete attention of another planning group to produce authoritative recommendations on court reform.

In addition, the American Bar Association established a task force to study in depth the specific steps that could be taken to bring order out of the chaos currently characterizing many courts. The report of the Special Committee on Crime Prevention and Control has been released and the planning group recommends to the members of the Platform Committee that they give the most serious attention to the findings of this American Bar Association study.

REFORM OF THE CRIMINAL JUSTICE SYSTEM—HEARING PARTICIPANTS AND PLANNING GROUP MEMBERS

(Harold E. Hughes, Chairman, and Claude D. Pepper, Vice Chairman)

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Babcock, Betsy, New York, New York.
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SOME FACTS ABOUT MEAT PRICES

Mr. HANSEN. Mr. President, during recent discussions about current meat prices, the full story often has not been told, and one supermarket chain even has deliberately attempted to mislead the public in its advertising by implying that cattlemen are responsible for meat prices at the counter.

There are a number of organizations and individuals attempting to get the truth to the public—among them the Laramie County Stock Growers Association by my State. This organization and its women's auxiliary, the Cowbelles, are buying advertising space in the daily newspapers of Wyoming to state the facts about meat prices, income to producers, and wages to other industries.

Many Members of Congress also have tried to get the truth across, and my friend the distinguished Senator from Nebraska (Mr. CURTIS) has done an outstanding job of refuting wild claims by supermarket officials and of pointing out other relevant facts which cannot be ignored if one is to have any kind of understanding of meat prices and how they are developed.

Mr. President, I commend Senator CURTIS and members of the Stock Growers Association in my State for making the efforts to set forth facts to answer half-truths and innuendo.

I ask unanimous consent that an advertisement sponsored by the Laramie County Stock Growers, an April 8, 1972, Washington Post article about Senator CURTIS' comments, and an April 3, 1972, article from the Republican Congressional Committee Newsletter, entitled "Who Gets the Money When Beef Goes Up?" be printed in the RECORD.

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

DO BEEF PRICES BUG YOU?—O.K.—LET'S EXPLORE SOME REVEALING COMPARISONS!

MEAT PRICES

March, 1952—March, 1972

69¢ lb. U.S. Choice Chuck Roast, 69¢ lb., Up—00.0%

63¢ U.S. Choice Ground Beef, 73¢ lb., Up—14.9%.

95¢ lb. U.S. Choice Sirloin Steak, $1.57 lb., Up—65.3%.

95¢ lb. U.S. Choice Round Steak, $1.35 lb., Up—42.1%.

64¢ lb. All Meat Franks, 85¢ lb., Up—32.8%.

CATTLE PRICES

Choice fed steers

March 26, 1952—$34.50 Per Cwt.

March 24, 1972—$35.00 Per Cwt., Up Only One Percent.

WAGES AND SALARIES

In 1952—$2,400 Teachers (No Experience, School District Number 1—B.A. Degree), in 1972 $6,800, up—183.3%.

In 1952—$12,500 U.S. Senators and Congressmen, in 1972 $42,500, up—240.0%.

In 1952—$65.00 Meat Cutter (48 Hour Week), in 1972 $185.00 (40 Hour Week) up—166.0%.

In 1952—$2.50 per hr. Unskilled Laborer, Bldg. Trade, in 1972 $4.12 per hr., up—64.8%.

In 1952—$4,506.69 Average Employee Wage, Entire Union Pacific Line, 1971, in 1972 $10,432.92, up—131.0%.

In 1950, One Hour's Labor Bought 1.7 Pounds of Beef—Today It Can Purchase 3.3 Pounds of Beef.

100 pounds of beef costs:

1951—$35.14, on the ranch, 1971—$32.35.

1951—$56.88, at the packing plant, 1971—$53.64.

1951—$78.50, at the super market, 1971—$104.32.

"Thank you for considering these facts."

Laramie County Stock Growers and Laramie County Cowbelles.

MEAT SELLER DENIES "DECEPTION" ON PRICE

(By Abbott Combes)

Sen. Carl T. Curtis (R-Neb.) yesterday criticized Giant Food, Inc. for what he called "a deceptive crusade" in its current advertisements of meat prices.

Curtis asserted that the Washington supermarket paid less for choice beef on March 21 than it did before last August's wage-price freeze. On March 21, a Giant advertisement appeared in Washington newspapers suggesting that consumers might purchase alternative foods because of increasing meat prices. The ad was signed by Esther Peterson, former consumer adviser to President Lyndon B. Johnson who now advises Giant.

In a related development yesterday, Richard E. Lyng, assistant secretary of agriculture for marketing and consumer services, said that a Giant advertisement in Thursday's editions of the Washington Post was "quite misleading." This ad reprinted a Post editorial favorable to Giant's meat policy, and then asked: "Aren't you glad we started it all? We are."

Actually, said Lyng, "all during March the wholesale price was going down, at the same time the retail prices were going up."

Joseph B. Danzansky, president of Giant, denied the allegations. The prices that Curtis quoted, Danzansky said, were for choice beef, but Giant buys the more expensive "top choice" beef. "Even in choice, there is a bottom, a middle and a top," he added.

Danzansky cited prices that, he said, the chain actually paid for its top choice beef: $56 per 100 pounds on August 13, 1971; $57.10 on March 21, and $54.75 currently.

He also cited comparable retail prices, in Giant stores, for three beef products. On Aug. 13, 1971, ground beef sold for 69 cents per pound; on March 21, 1972, it sold for 75 cents per pound and it is currently selling for 65 cents per pound, he said.

Sirloin steak sold for $1.45 per pound last Aug. 13, for the identical price on March 21 and now sells for $1.29. Boneless chuck sold for 95 cents before the freeze, 99 cents on March 21 and 89 cents at present, the Giant president said.

Even if Danzansky's figures are accurate, Curtis then charged, they still indicate that increases in retail prices have been greater than increases in wholesale costs.

"Now the Giant stores and Mrs. Peterson are taking credit publicly for driving the price of beef down. This type of phony consumerism must be investigated and exposed," said Curtis, who made the charge after seeking out reporters in the Senate press gallery yesterday. Curtis' state is a major producer of meat.

"If Mr. Danzansky's own figures are accepted, the price he paid for beef on March 21 was 1.1 cents per pound more than he paid last Aug. 13, yet his firm, again by his own figures, raised the price of hamburger 6 cents per pound, from 69 cents to 75 cents, during the same period," Curtis said.

"What did he do with the other 4.9 cents per pound that he charged the people of Washington who cannot afford anything but hamburger? And the other 2.9 cents per pound for boneless chuck?" asked Curtis.

"He's giving a cavalier response to a complicated problem," replied Danzansky, who said that it was "not fair" to relate the cost of several cuts of meat to the price of the whole carcass.

Noting that the cost of sirloin steak did not change over the same period, Danzansky tied the price of hamburger to the price of frozen boneless cow meat which makes up to 20 per cent of hamburger. The cost of this rose from 67 cents a pound last Aug. 13 to 73 cents a pound on March 21, he said.

Furthermore, Danzansky added, Giant made 2 per cent less in gross profits last month than it had the year before.

Curtis also said that during a luncheon conversation on March 22 Lyng had discussed the Aug. 13-March 21 price difference with Danzansky, but the Giant president yesterday asserted that he had not discussed the matter with the federal official.

Lyng disagreed, and said in an interview that he had mentioned the discrepancy.

"It was my impression that Mr. Danzansky and Mrs. Peterson were surprised that they were buying choice beef for a little less," Lyng said.

Curtis directed most of his criticism at Mrs. Peterson, who could not be reached for comment.

"It is one of the meanest actions against a segment of our economy that I've ever seen," the Republican senator said in an interview.

"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. Thursday's price for Midwestern beef was down to an average of $51.75 or $2.25 below the level at the time of the Aug. 15, freeze," he said.

WHO GETS THE MONEY WHEN BEEF GOES UP?

Is the American farmer responsible for inflated food prices?

Not so, say President Nixon and his Secretary of Agriculture, Earl Butz, who have urged hearings by the Price Commission to determine whether or not profit margins of the so-called middleman food handler have gone beyond the guidelines laid down by the commission.

"It is a mistake and totally unfair to make the farmer the scapegoat for the high meat prices and the high food prices," said the President last week noting that only one-third of the price the consumer pays for food results from what the farmer gets for his effort. The other two-thirds goes to the middleman.

"The spread between what the farmer receives and what the consumer pays in the grocery store and the supermarket has widened," said Mr. Nixon. "It is too great."

Meanwhile, Secretary Butz has come up with statistics which show that the middleman is chiefly responsible for upping the cost of feeding American families.

Take bread, for instance. The statistics reveal that the U.S. wheat grower got 3 cents for the wheat in a loaf of bread in 1957. In 1971, he was still getting 3 cents for the wheat in a loaf of bread—but the retail price had climbed from 18 cents to 25 cents per loaf.

The recent hassle over beef prices is another example. Two leading grocery chains took out after the beef producers. One of them, Giant Foods, has as its consumer adviser Esther Peterson, who held similar jobs in the Kennedy and Johnson Administrations. She has urged a buyer's boycott of beef.

The Giant Food chain ran a full-page ad in newspapers—castigating the high price of meat and urging housewives to buy substitutes. The ads cited price increases in meat products and implied that recent strengthening of farm beef prices were to blame.

The Agriculture Department pointed out that prices per hundredweight on March 24, 1972 for beef carcasses were $53.25. On August 13, 1971—at the time of the wage-price freeze—beef carcasses were selling in Omaha for $54.

Thus, Giant Food and other retailers could get beef carcasses cheaper in March of 1972 than they could before the freeze. Yet they launched an attack on the farmer—attempting to blame their own high prices on the basic producer.

Rep. Robert Price (R., Tex.) demanded an apology from the retail firms on behalf of the Nation's beef producers, charging that the food chains were "self-serving, flying in the face of the facts."

Is the farmer getting more and the consumer less? This is the impression that the labor unions and some business interests are carefully cultivating. What are the facts?

In 1952, farmers got 49 cents out of every dollar spent for food in the U.S.; in 1971, they got only 38 cents, Department of Agriculture figures show. Disposable income for farmers is only 75 percent of the average of non-rural incomes.

Secretary Butz points out that beef prices now are just getting back to the level of 20 years ago, yet average wage levels in food-marketing employment are 2.5 times the level of 20 years ago. Retail food prices are up 43 percent over the past two decades, but farm prices only 6 percent.

In 1951, one farmer grew food for 16 people. Today, one farmer produces enough for 51 people. Farm-machinery prices meantime have doubled. Farm debt is up five times. Wage levels on the farm are up 2.3 times and production costs have nearly doubled.

ADMINISTRATIVE OBSTACLES TO VOTING—REPORT OF LEAGUE OF WOMEN VOTERS

Mr. KENNEDY. Mr. President, once again, the League of Women Voters has performed a valuable and extraordinary service to the Nation. Over the weekend, the League's Education Fund made public a remarkable document entitled "Administrative Obstacles to Voting." The report emphasizes, in unmistakable terms, the enormous burden that our present system of registration and voting imposes on citizens throughout the Nation.

Nothing better illustrates the problem than the cover of the League's report, which depicts a complicated maze as a symbol of the average citizen's frustration in attempting to register and vote.

Now, at last, we have an excellent and informative survey of the problem, based on studies of election practices in hundreds of communities across the Nation during the fall elections of 1971. Armed with this new information, I hope that Congress will make the strongest possible effort to deal with the problem as quickly and as effectively as possible. It is not too late to remedy some of the worst abuses now.

Mr. President, I commend the League of Women Voters for the important new facts and insights it has brought to the present national debate over our shameful registration and election procedures. Lucy Wilson Benson of Massachusetts, the chairman of the League's Education Fund, and Fay Williams of Indianapolis, a trustee of the fund, under whose direction the study was carried out, deserve the gratitude of the Nation for helping us to see these deep and persistent problems more clearly.

Mr. President, I ask unanimous consent that the report and a news release describing the principal conclusions of the report be printed in the RECORD.

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

NEWS RELEASE, LEAGUE OF WOMEN VOTERS EDUCATION FUND, APRIL 10, 1972

WASHINGTON, D.C.—The League of Women Voters Education Fund charged today that millions of Americans will be denied the right to vote in the 1972 Presidential election.

A nationwide survey by League members reveals the existence of fundamental obstacles to voting and registration which point to the need for a major administrative overhaul of the American election system.

The report of the Education Fund's election systems project states:

"In the Presidential election of 1968, 73 million Americans or approximately 60% of the total population of voting age actually voted; while 47 million or about 40%, did not cast a ballot. Millions of citizens fail to vote not because they are disinterested, but because they are disenfranchised by the present election system. In the case of minorities, the poor, the uneducated and the aged, the system imposes complicated requirements which excludes them from the electoral process. Ironically, millions of other Americans lose their right to vote not because they are part of a minority or because they are poor, but because they are part of the mainstream of American society. Moving to a new neighborhood, accepting a company transfer, going to college, getting married, serving their country or exercising other rights, freedoms and obligations all too often has the effect of denying citizens their right to vote."

More than 3,000 members of the League of Women Voters conducted the study of election officials and practices in 251 communities in all 50 states during the fall election period of 1971. Their findings document the need for widespread administrative changes and pinpoint specific election practices which deter citizens from either registering or voting.

League Education Fund Chairman Lucy Wilson Benson commented, "In a democratic society, no right is more fundamental than the right to vote. Regrettably, our election system is not working well. This study illustrates the many ways in which the election system discourages and denies the right of hundreds of thousands of Americans to vote in local, state and federal elections. This massive disenfranchisement will continue unless improvements are made at both the administrative and legislative levels."

The data clearly suggest that local officials have in many instances failed to use the tools allowed by law to make registration and voting easier and more accessible for all citizens. For example, 52% of the 458 registration places observed were not clearly identified and 38% of the communities had no additional registration hours available 30 days prior to the closing of registration.

By observing citizen experiences at registration and polling places League volunteers also identified such problems as long waiting lines; short office hours; inconveniently located registration and polling places; and the frustration of registration periods ending many weeks before election day. However, significantly less than one-fourth of the local officials interviewed held that these or other concerns were problems in their community.

The study also shows that the behavior of registration staff was not helpful 52% of the time and became significantly less helpful when citizens were from lower income, working class, or minority groups.

Other figures revealed: 77% of the communities studied had no Saturday registration in non-election months and 75% had no evening registration; in 29% of communities registration closed more than 30 days prior to an election; 55% of the communities charged a fee for registration lists and authorization for access to the lists was required in 38% of the cases.

Twenty-eight percent of communities surveyed gave poll workers no training and in an additional 60 percent, the training was 5 hours or less; 38 percent of all polling places observed were not clearly marked as places to vote; 89 percent of local officials do not publish a voter information guide; 85 percent of the communities reported election officials do not publish a sample ballot; 58 percent of polling places lacked convenient public transportation; 7 percent of the polling places opened late; in 29 percent of the polling precincts voting machines were out of order for periods ranging from 30 minutes to two hours.

Thirty-two experts in the voting rights and election law fields served as an advisory committee to the League Education Fund study. Based on the survey data, they developed a series of recommendations directed to state and local officials as well as to community citizen groups.

Their recommendations include:

1. That the chief election official in each community use his broad discretionary powers under current law to expand citizen opportunities to register and vote.

2. That the chief state election official ensure uniform interpretation and administration of state law by requiring local officials to comply with statewide standards.

3. That identified voter needs be met through localized special services such as: the use of temporary and mobile registration units; expanded registration and polling hours; bilingual materials; mandatory training sessions for poll workers and maximum use of qualified deputy registrars.

4. That citizen groups participate in selection of local election officials, monitor their decisions and actions and work for the specific administration reforms required in their communities.

The study also recommends that political parties, the mass media and educational institutions use their influence to create and maintain a responsive and responsible election system as well as provide and encourage the flow of information to the public on registration, voting and elections.

Alternative strategies for implementing these recommendations will be considered at a special meeting in Washington, D.C., of more than 60 citizen organizations April 20th at the Sheraton-Park Hotel.

The study which covered approximately one-fifth of the U.S. population was conducted under a grant from the Ford Foundation.

Data were collected through three methods: (1) recording official registration and voting procedures, (2) interviewing government and election board personnel, and (3) observing citizen experiences.

Of the 251 communities studied: 58 percent were cities; 13 percent were suburbs and 29 percent were small towns or rural areas. The sample included: 8 percent with a population over 500,000; 26 percent with 100,000 to 500,000; 33 percent with 25,000 to 100,000 and 33 percent with less than 25,000 population.

Analysis of the survey data was done by Battelle's Columbus Laboratories, Columbus, Ohio. League trustee Mrs. Frank Williams, an Indianapolis lawyer, is chairman of the Election Systems Project.

ADMINISTRATIVE OBSTACLES TO VOTING

(A report of the League of Women Voters Education Fund)

This publication has been made possible by funds granted to the League of Women Voters Education Fund by the Ford Foundation of New York.

PREFACE

The need for election reform through *federal legislation* has been documented and endorsed by several committees of national prominence. Most notable is the report of the President's Commission on Registration and Voting Participation [1] and the reports of the Freedom to Vote Task Force.[2] A forthcoming report of the National Municipal League will focus on the need for *legislatively enacted election reform*. A model state election code also is being developed by the National Municipal League and will be available to state legislatures for their consideration.[3]

In addition to changes in election laws, there is a need for changes in *administrative practices* of local and state election officials. (For the purposes of this study administrative practices refers to the standards, procedures and structures set up to implement state election laws.) The main purpose of this report then is to document the need for administrative changes and to draw attention to the numerous administrative obstacles which confront all Americans as they seek to implement their right to vote.

The basis for this report is a study undertaken by the League of Women Voters Education Fund (LWVEF) with the assistance of a grant from the Ford Foundation. The administrative practices of election officials in 251 communities were documented through the efforts of over 3,000 League volunteers during the fall election period of 1971.[4]

All types of communities were included in this study; those where problems of registration and voting were likely to be found in the extreme as well as those where the problems were less visible. In general, the information was collected from at least one large city, a suburb, an independent small town, and a rural area in every state. To supplement the League effort, information from some areas of the rural South was collected by local organizations associated with the Voter Education Project. This sample of communities encompassed approximately 40 million people or one-fifth of the total population of the United States.

Data were collected through three methods: (1) recording official registration and voting procedures, (2) interviewing government and election board personnel to determine attitudes and practices, and (3) observing citizen experiences at both registration and polling places. Information also was collected on state administrative practices with regard to elections by some state Leagues of Women Voters.

It should be noted that observations of registration and polling places were made during the period of the 1971 fall elections. This means that administrative behavior was observed in a non-presidential election year in which various types of contests, some considerably more important and appealing

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Footnotes at end of article.

than others, were at stake. This factor tends to mute the findings and conclusions drawn from this study. It is reasonable to conclude then that the findings contained in this report might be an understatement of the problems citizens experience when participating in presidential elections.

It is also important to review the findings within the framework of the Constitutionally-guaranteed right to vote of every eligible citizen. This means that although some figures pertaining to a given administrative obstacle to voting may be less than 50%, the finding may nevertheless be highly significant to the extent that it indicates that thousands or hundreds of thousands of citizens are possibly being disenfranchised.

Within this context, then, *the study documents the fact that the current system of registration and voting functions inefficiently for citizens throughout the United States.* Both supportive evidence and specific recommendations for administrative changes are included in this report.

A LOOK AT THE PRESENT SYSTEM

During the next six months, much public attention will focus on the principal conditions and issues of the November presidential election. It is doubtful, however, that very much concern will be given to the electoral process itself—that system of registration and voting procedures Americans must use in order to express their choice of the candidates.

Most citizens show little interest in the process not because they dismiss its importance but simply because they do not recognize the extent to which the current election system impairs the right of all Americans to engage in self-government. The public generally believes that the system has worked well for them in the past and that it will work well for the 140 million Americans of voting age in 1972.

Regrettably, the present election system has not worked well. It still bars the mark of forces which originally gave it birth at the turn of the century: fear of the then-widespread corruption and fraud at the polls and a desire to control the voting participation of millions of European immigrants who threatened the political status quo. Although these particular forces have largely ceased to exist, the system remains saddled with many unnecessarily restrictive laws and exclusionary procedures. It has become an administrative maze in which many of the abuses it was designed to prevent can, in fact, be more easily hidden and through which the average citizen must painstakingly grope in order to exercise his fundamental right to the franchise.

Fear of fraud is often advanced in opposition to proposed reforms of the present election system. It could be argued, however, that such abuses are a function of community mores and will exists in some communities no matter what election procedures are established. More noteworthy, it would seem, is the fraud perpetuated on the American people by a system which excludes millions of eligible voters from the electoral process in the name of preventing a few dishonestly-cast votes.

Indeed, the system works poorly for *all* Americans. In the case of minorities, the poor, the uneducated and the aged, who are unable to meet its complicated requirements easily, the system naturally imposes more heavily than it does on the average mainstream American. These groups can be even further excluded from the electoral process by the arbitrary and uneven application of administrative procedures which, while legal, can be manipulated to serve the political advantage or philosophy of those who control them.

Such misuse of administrative practices is not new to the institutional life of our society. What is notable about the established election system is the extent to which, barring misuse of any kind, it denies the rights and infringes on the convenience of hundreds of thousands of Americans regardless of their racial or economic background.

In the presidential election of 1968, 73 million Americans or approximately 60% of the total population of voting age actually voted for a candidate of their choice; 47 million or approximately 40% *did not* cast a ballot. Compared with other democratic countries, this voting rate of American citizens is embarrassingly low. For example, the rate at which voters in Italy have participated in elections in the last 10 years has regularly approached 90%. Canada records a voting rate of approximately 75% to 80%, and in the last 25 years, West German citizens have voted at rates which range between 78% and 87%.

It is the contention of this report that millions of American citizens fail to vote not because they are disinterested but because they are disenfranchised by the present election system. Ironically moreover, many of them lose their right to vote not because they are poor, black, uneducated or uninterested, but because they are part of the mainstream of American society. Moving to a better neighborhood, accepting a company transfer, going to college, getting married, serving their country and exercising other rights, freedoms and obligations to their country too often has had the effect of denying citizens their right to vote.

Undoubtedly, the present election system will continue to disenfranchise millions of Americans of every economic and social background unless improvements are made at both the administrative and legislative levels.

THE POWER OF THE LOCAL OFFICIAL UNDER CURRENT ELECTION LAWS

To what extent can electoral reform occur within the context of existing law? To what degree do current state election laws affect the administrative behavior of election officials?

In a few areas of registration and voting, the law is specific. Residency requirements and closing dates for registration are examples. Although the capacity of administrators and local officials to act independently is considerably limited in these instances, they *can* determine the impact of these laws by the vigor with which they make these requirements known and encourage citizens to meet them.

Most of the laws concerning registration and voting, however, are not specific. In many cases, the law only establishes broad minimum requirements, thereby leaving a great deal of discretion to local officials. For instance, the law may require that a central registration office be located in each city of the state but not specify how clearly that office shall be identified. In fact, 52% of approximately 300 registration places observed in this study were *not* clearly identified. Again, the law may state that registration lists must be available to the public but it often does not stipulate the mechanisms for making the lists available. For instance, there was a financial charge for the registration list in 55% of the communities and authorization for access to the list was required in 38% of the cases.

Local officials may be even more powerful where the law is merely permissive. State statutes frequently allow, but do not require, the following: precinct registration, Saturday and/or evening registration hours, and the authorization of deputy registrars. Date from the community study show that in these areas local officials frequently do not use these statutory powers to reach citizens.

In 29% of the communities where deputy registrars were allowed, election officials failed to use this method to reach citizens. While only 10 states[5] expressly forbid evening and Saturday registration, 77% of the communities studied had *no* Saturday registration and 75% had *no* evening registration in non-election months.[6] Even during the heat of an election period, i.e. the 30 days prior to the closing of registration, 38% of the communities provided *no additional hours* for registration. The data clearly suggest, then, that local officials have in many cases failed to use the tools allowed but not mandated by law to make registration and voting easier and more accessible for all citizens.

In addition to their influence in areas where the law is stated in broad or permissive terms local officials are able to influence the electoral process in matters where the law is silent. Although the law may neither require, suggest nor forbid it, an election official might provide information to citizens concerning the election, might conduct extensive training programs for all poll workers, and might provide bilingual clerks where needed. While such initiative would remove many obstacles to voting, local officials have seldom acted in their areas: only 11% of the local officials included in this study published a voter information guide; 28% provided no training for poll workers; and in approximately 30% of the registration places where bilingual assistance was needed, local officials failed to provide this service. Election officials clearly have the power to make registration and voting procedures easier for citizens but this study has found that, by and large, they don't use it.

To a large extent, local officials retain their discretionary powers by default. The community study found that the state authority charged with responsibility for administering the state election code most often counted it as one of several other major functions of his or her office. In most states, reports from local officials to the state authority are generally required just after elections and contain little else than the total number of people registered and voting in a given jurisdiction and the results of the latest election. Though many states issue guidelines to local election officials, few state administrative mechanisms have been set up to monitor or enforce compliance with the guidelines. In short, state election administrators have little knowledge or control and exert practically no leadership over local election officials and the manner in which they administer the state election code. It is little wonder then that the local election official can, and often does, become the chief policy-maker for all local, state and national elections held within his jurisdiction.

FOOTNOTES

[1] Report published in 1963.

[2] Two reports issued in 1971 by this commission of the Democratic National Committee; "Report of the Freedom to Vote Task Force of the Democratic National Committee" and "That All May Vote".

[3] Developed under a two year grant from the Ford Foundation, the model state election codes will be published in the spring of 1973.

[4] A modified version of the comprehensive survey on which this report is based was conducted by League volunteers in an additional 600 communities. The purpose of this Mini-Survey was to verify the validity of the comprehensive surevy sample.

[5] Includes North Dakota with no statewide registration and New Hampshire and Vermont where a checklist system is used.

[6] For the purposes of this study "evening hours" pertain to the hours after 5:00 p.m.

TABLE A.—DISTRIBUTION OF RESEARCH COMMUNITIES ACCORDING TO POPULATION SIZE BY ADDITIONAL TIME AVAILABLE FOR REGISTRATION DURING AN ELECTION MONTH (—MONTH PRIOR TO CLOSING OF REGISTRATION)

	Total communities	Additional hours election month			Additional Saturdays [1]			Additional evenings [1]			Additional evening hours [2]		
	Percent	Percent	Yes	No	Percent	Yes	No	Percent	Yes	No	Percent	<10 hours	>10 hours
Population size	N=200	100	62	38	100	70	30	100	83	17	100	52	49
Greater than 1,000,000	4	2	100	[3] (1)	(3)	100	(4)	(—)	100	(2)	(2)	100	(4)	(—)
500,000 to 1,000,000	13	6	100	62	38	100	63	37	100	89	11	100	57	42
250,000 to 500,000	21	10	100	41	59	100	75	25	100	77	23	100	----	100
100,000 to 250,000	33	16	100	68	32	100	90	10	100	70	30	100	36	64
50,000 to 100,000	27	13	100	73	27	100	55	45	100	86	14	100	44	57
25,000 to 50,000	42	20	100	66	34	100	75	25	100	90	10	100	56	44
10,000 to 25,000	46	22	100	60	40	100	67	33	100	93	7	100	61	39
Less than 10,000	22	11	100	56	44	100	44	56	100	60	40	100	83	17

[1] Refers only to those places reporting some additional hours of registration during an election month.
[2] Refers only to those places reporting some additional evening hours of registration during an election month.
[3] Refers to actual number rather than percentages.

TABLE B.—DISTRIBUTION OF RESEARCH COMMUNITIES ACCORDING TO POPULATION SIZE BY AVAILABILITY OF REGISTRATION BY DEPUTY REGISTRARS

	Total communities	Deputy registrars allowed			Deputy registrars used [1]			Limits to number of—					
								Deputy registrars			Forms		
	Percent	Percent	Yes	No	Percent	Yes	No	Percent	Yes	No	Percent	Yes	No
Population size	N=208	100	73	27	100	71	29	100	38	62	100	13	87
Greater than 1,000,000	4	2	100	[2] (4)	(—)	100	(2)	(2)	100	(2)	(2)	100	(2)	(2)
500,000 to 1,000,000	13	6	100	85	15	100	100	----	100	20	80	100	----	100
250,000 to 500,000	21	10	100	71	29	100	64	36	100	40	60	100	10	90
100,000 to 250,000	33	16	100	73	27	100	63	37	100	40	60	100	31	69
50,000 to 100,000	27	13	100	70	30	100	82	18	100	44	56	100	27	73
25,000 to 50,000	42	20	100	83	17	100	80	20	100	46	54	100	7	93
10,000 to 25,000	46	22	100	72	28	100	76	24	100	40	60	100	8	92
Less than 10,000	22	11	100	46	54	100	56	44	100	33	67	100	----	100

[1] Includes only those communities where deputy registrars are allowed.
[2] Refers to actual number rather than percentages.

PERCEPTIONS AND ATTITUDES OF LOCAL OFFICIALS AND CITIZEN GROUP REPRESENTATIVES

The perceptions and attitudes of officials and community leaders are important to an examination of election systems for several reasons. First, they are frequently reflected in administrative behavior and in evaluations of that behavior. In many cases, they also indicate the willingness or unwillingness of community leadership to undertake needed administrative and legislative reform. Where opinions are backed by the power of an office or the resources of an organization, they take on added importance. Finally, such attitudinal data often show how different groups perceive community problems and the extent to which they are sensitive to citizen needs.

PERCEPTION OF REGISTRATION AND VOTING NEEDS

Long lines, short office hours, inaccessible registration and polling places, and registration periods remote from the date of election are common experiences to many Americans.

Interviews with local officials who hold the authority, responsibility and power to alleviate these problems show that they are generally insensitive to them. For instance, less than one-fourth of election officials held that the following were problems in their communities:

Residency requirements
Complex registration procedures
Complex absentee voting procedures
Inconvenient registration hours
Distant and inconvenient places of registration
Complicated voting procedures, i.e. use of voting machines and paper ballots
Inconvenient hours of polling
Positioning candidate names on the ballot, and
Insuring the proper functioning of voting machines

On the other hand, most persons representing voting rights groups viewed all of these as serious problems in their communities.

ATTITUDES TOWARD LEGISLATIVE AND ADMINISTRATIVE REFORMS

Although the need for legislative action to reform the electoral process has been documented and endorsed by several committees of national prominence (see page 1), the League of Women Voters Education Fund community study shows that local election officials are reluctant to support many legislative changes and to assume the responsibility for administering reforms. For instance, support by local election officials dipped to less than a majority in regard to the following:

Carrying out door-to-door registration by government officials.
Updating registration lists monthly for public review.
Requiring at least 16 hours of training for election officials.
Extending voting hours from 7 a.m. to 9 p.m.
Conducting elections on a non-work day.
Publishing voter education materials at least 30 days prior to an election.
Placing local election officials under state merit systems.

In short, election officials seem to view the government as a passive participant in the electoral process with no responsibility for reaching out to citizens. They apparently believe that the initiative lies entirely with the citizen. This would seem to suggest at least one reason why 47 million Americans didn't vote in 1968. The issue clearly goes beyond the generally accepted explanation of voter apathy. Viewed from another perspective, the question arises that if the government can find a citizen to tax him or draft him into military service, is it not reasonable to assume that the government can find that same citizen to enroll him as an eligible voter and include him in the active electorate?

TABLE C.—NUMBER AND PERCENT OF ORGANIZATIONAL REPRESENTATIVES BY POSITION WHO AGREE THAT SELECTED REGISTRATION AND ELECTION PRACTICES ARE BASICALLY GOOD IDEAS [1]

[In percent]

Statement	Elected officials		Voluntary organization							Range	
	CCoEO N [2]=158	CCiEO 86	LWV 220	NAACP 120	LCP 166	YG 62	PCC 206	CAL 150	MG 62	Low	High
A. Door-to-door registration should be carried out by local government officials in order to get all eligible citizens on the voter registration lists	31	23	50	69	58	82	25	47	60	23	82
B. Voter registration should not be closed sooner than 30 days before any election	76	73	92	88	89	87	87	83	91	73	92
C. Residency requirements for voting in local elections should not exceed 60 days	61	49	74	81	77	84	65	53	73	49	84
D. Each county should require at least 16 hours of instruction for election officials	46	47	64	83	72	85	48	70	85	46	85
E. On election day, polling places should open from at least 7 a.m. to 9 p.m.	25	34	77	77	69	92	63	60	94	25	94
F. All elections should be held on a nonwork day	29	20	35	41	33	46	18	18	47	18	47
G. 30 days before each election, election officials should send each registered voter a voter information guide	23	24	62	66	46	65	32	44	75	23	75

[1] Not all data from the original interviews are included in this table.
[2] N refers to the number of respondeints for the 1st statement. All percents computed on actual N's but sample sizes not reported in this table.

Note: Positions are identified as follows: CCoEO=Chief County Election Official; CCiEO=Chief City Election Official; LWV=League of Women Voters; NAACP=National Association for Advancement of Colored People; LCP=Labor Council President; YG=Youth Groups; PCC=Chamber of Commerce President; CAL=American Legion Commander; MG=Nonblack Minority Groups.

TABLE D.—NUMBER AND PERCENT OF ORGANIZATIONAL REPRESENTATIVES BY POSITION WHO BELIEVE THAT SELECTED REGISTRATION AND ELECTION CONDITIONS EXIST IN THEIR COMMUNITY[1]

[In percent]

Statement	Election officials		Voluntary organization							Range	
	CCoEO N[2]=158	CCiEO 86	LWV 220	NAACP 122	LCP 161	YG 61	PCC 203	CAL 150	MG 61	Low	High
A. Many nonvoters would vote if registration procedures were less complex	11	9	60	57	42	74	22	13	69	9	74
B. Many potential voters become "nonvoters" because absentee voting procedures are too complex	20	16	69	61	41	76	27	16	67	16	76
C. Tne hours of registration set by the election officials are inconvenient, and many potential voters find it difficult or impossible to register	9	8	59	51	46	64	20	14	70	8	70
D. The polls close so early in the day that many potential voters find it difficult or impossible to get to the polls on time	8	6	39	47	31	54	20	11	64	6	64
E. Places of registration are inconveniently located, and many potential voters find it difficult or impossible to register	9	7	60	53	43	73	22	15	64	7	73
F. Many nonvoters are simply frightened by the complicated procedures of voting	20	12	67	65	48	68	25	17	75	12	75

[1] Not all data from the original interviews are included in this table.

[2] N refers to the number of respondents for the 1st statement. All percents computed on actual N's but sample sizes not reported in this table.

Note: Positions are identified as follows: CCoEO=Chief County Election Official; CCiEO=Chief City Election Official; LWV=League of Women Voters; NAACP=National Association for Advancement of Colored People; LCP=Labor Council President; YG=Youth Groups; PCC=Chamber of Commerce President; CAL=American Legion Commander; MG=Nonblack Minority Groups.

OBSTACLES TO ORGANIZED CITIZEN INITIATIVE

Since election officials have so often been unwilling to support outreach efforts, citizen groups have for many years attempted to fill this void through a variety of activities such as: conducting voter registration drives, sponsoring get-out-the-vote campaigns, publishing voter education materials, and providing volunteer staff for mobile registration units. These efforts, however, have all too often been frustrated by the inefficiencies and restrictive practices of the system as indicated by interviews with 584 citizen group representatives.

Approximately 50% of the organizations using registration lists to be inaccurate, and in half those cases the inaccuracy was reported to be greater than 10%. Lists were available to the public in 96% of the communities, but there was a financial charge for the list in 55% of the communities and authorization was required to use the list in 38% of the cases.

Groups were also frustrated when they attempted to have members deputized to register voters. Approximately one-fourth of the organizations seeking to have members deputized were refused the authorization they requested. Of those organizations which succeeded, 31% reported a limit to the number of deputy registrars allowed and 10% reported a limit to the number of forms a deputy registrar could obtain at any one time, an effective way of limiting the number of citizens registered.

These examples once again illustrate an attitude on the part of many election officials which tends to obstruct rather than encourage the efforts of citizen groups to expand the electorate. The instances cited strongly suggest the need for administrative reforms which would place more responsibility for outreach programs with election officials themselves and which would simplify administrative procedures pertaining to outreach efforts by citizens.

SEEKING TO REGISTER AND VOTE: EXPERIENCES OF THE VOTER

Under the system of voter enrollment and participation currently used in the United States, the individual citizen must take the initiative in order to qualify himself as a voter. The preceding discussion has indicated that the law does not require local election officials to take the initiative and that many are unwilling to employ their numerous powers or fully utilize the efforts of citizen volunteers to reach potential voters.

In this context, the experiences of the individual citizen as he seeks to register and vote are extremely important. If the cost in terms of time, energy, inconvenience or personal pride is too high, the individual may choose not to vote. Considering the all too frequent occurrence of complex forms, unhelpful and poorly trained staff, machine breakdowns, and inconveniently located registration and polling places, it is surprising that so many citizens do vote. That the system functions at all is a tribute to the sheer determination of citizens to overcome these inconveniences and obstacles.

Registration is the first step in the voting process and the most crucial. When people register, they usually vote. In the presidential election of 1968, 89% of those persons who were registered actually voted. Observations of registration places and examination of formally stated registration practices provide some dramatic examples of the problems citizens encounter in trying to register.

The first problem that the citizen is likely to encounter will be finding the registration office. He may well have to travel a considerable distance from his home to a central registration office (except perhaps during the last month of registration for a particular election when he is more likely to find facilities in his neighborhood). In 40% of the communities studied, however, no additional registration places were opened even during these rush months. Since 54% of the registration places were not accessible by convenient public transportation, 24% lacked convenient parking, and 52% were not clearly identified as a registration or elections office, the prospective registrant may well be frustrated before he arrives.

TABLE E.—DISTRIBUTION OF REGISTRATION STAFF BEHAVIOR ACCORDING TO SOCIAL CHARACTERISTICS OF REGISTRANTS

Variables	Total samples observed		Registration staff behavior			Registration staff behavior		
	Percent	Percent	Helpful	Not helpful	Percent	Courteous	Discourteous	
Social class[1]	N=209	100	100	48	52	100	62	38
Middle	125	60	100	54	46	100	68	32
Working	53	25	100	42	58	100	58	42
Composite	31	15	100	33	67	100	44	56
Race[1]	N=213	100	100	49	51	100	63	37
White	147	69	100	52	48	100	67	33
Primarily white	46	22	100	52	48	100	61	39
Composite	13	6	100	17	83	100	50	50
Primarily nonwhite	7	3	100	[2](1)	(6)	100	12	88

[1] These classifications are based upon the judgment of registration observers.

[2] Refers to actual number rather than percentages.

Once he has located the registration office, the prospective registrant may find that it is not open for registration. In 29% of the communities, registration closes more than 30 days prior to an election. Even if he arrives before the registration deadline, the office may be closed since 77% of the communities studied had *no* Saturday registration and 75% of the communities had *no* evening registration during non-election months. While 52% of the communities did have additional registration hours during election months, 30% of these still had no additional Saturday hours and 17% had no additional evening hours.

The persistent citizen who anticipates and copes with the numerous obstacles already mentioned will next find himself confronted with a registration form. If the form is confusing or questions arise concerning his eligibility, he may not find the staff very helpful. Fifty-two percent (52%) of the observers at registration places classified staff as not helpful. Furthermore, in 30% of the places where bilingual staff was needed, it was not found.

There is no way to measure the number of citizens who are discouraged from registering even before they get to the registration office, but observations of 5,750 people attempting to register at approximately 300 registration places showed that 3 out of every 100 qualified people who made the effort and found the registration place still left without being registered.

Casting a ballot at a polling place is the ultimate event in the electoral process for the citizen. Although he has been successfully registered, the potential voter may be frustrated in his attempts to vote. Polling places, though usually located in his precinct, may be poorly marked (as were 38% of the polling places observed) and public transportation and convenient parking may be lacking. Fifty-eight percent (58%) of the places observed lacked convenient public transportation and 11% lacked convenient parking. Since polling places are not opened

in the evenings in many states, the potential voter may need to take time from work or rush to the polling place before or after work. If he goes early he may not be able to vote because many polls open later than the hour prescribed by law as happened in 7% of the 484 polls observed. If he goes to the polls following work, he may find that he is refused the right to vote even though he is standing in line at closing time. Such refusals occurred at 19 of the polls observed.

The prospective voter who gets into the polling place will probably confront a poorly trained staff usually selected on the basis of their partisanship. If there are voting machines at his polling place, he may well be delayed in casting a ballot by a machine breakdown since this occurred in one out of every ten places having voting machines. His right to vote may be challenged as where the rights of 419 persons at the observed polls. In the event that he successfully casts a ballot, it must be attributed at least partially to his perseverance.

SUMMARY

In a democratic society, no right is more fundamental than the right of every citizen to vote. Indeed, the vote is the very symbol of democracy. It is the basic unit of our representative form of government; the major vehicle through which the consent of the governed is offered or withheld—the prime means by which the American people can express and effect their will. The right to vote, therefore, necessarily carries with it the right of equal access for every eligible citizen to the formal system of regulations and procedures through which the vote is cast.

In studying the way our current election system is administered, the League of Women Voters Education Fund found that the administrative practices of local election officials and therefore citizens' access to the election system vary greatly from place to place, that many state election officials have not established structures and procedures which would insure uniform interpretation and administration of state election codes throughout each state and that the discretion which most state laws give to local election officials is often exercised in a manner which impedes rather than enhances the citizen's right to vote.

There is an urgent need for administrative reform of our present election system. Citizens must no longer be forced to earn the "privilege" but rather must be insured the *right* to vote. They must demand that the discretion granted to local officials by current state laws be used for the purpose for which it was originally intended; to give election administrators the margin of flexibility they need to assure the access of all citizens to the vote under the varying social, economic and geographic conditions which exist within states.

RECOMMENDATIONS OF THE ELECTIONS SYSTEMS PROJECT COMMITTEE

An advisory Committee consisting of nationally prominent authorities and experienced practitioners in the fields of voting rights, citizen participation, and elections was convened by the League of Women Voters Education Fund and the National Municipal League to assist them in designing the Election Systems Project. Upon completion of the LWVEF survey, the Committee reviewed its findings and developed the following recommendations regarding elections administration as a practical means of removing unnecessary obstacles to voting. (See p. 3/NML).

Some of the measures recommended may require changes in some state election codes. The purpose of this report, however, has been to identify administrative obstacles and to document the need for eliminating them. It is now up to local and state officials and citizens throughout each state to decide which reforms their own election system requires and to employ whatever means would most effectively achieve them.

FINDINGS: CHIEF LOCAL ELECTION OFFICIALS

The administrative practices of local election officials were found to be diverse throughout the states. Data on their attitudes toward reforms that would extend the franchise as well as their perceptions of the problems citizens might encounter under the present system reflect a tendency to conceive of the vote as a privilege rather than as a right. These findings imply serious discrepancies between the citizens' Constitutional right to the vote and the actual practices which govern its implementation.

Therefore, the Election Systems Project Committee recommends: That the chief election official of every community comprehensively analyze community conditions and citizen needs by examining the registration rates of every precinct in his jurisdiction and by talking to representatives of various citizen organizations interested and active in issues of registration and voting participation;

That the chief election official of every community go the full limit of his legal powers in order to aggressively extend the right to vote to every eligible citizen. Such a program could include 1) maximum use of out-of-office registration techniques, e.g., use of mobile and other temporary registration units; 2) maximum authorization of qualified deputy registrars on a paid or volunteer basis; 3) the provision of bilingual staff where needed; 4) the publication and widespread dissemination of voter information guides; 5) the expansion of registration and polling place hours; and finally, 6) the use of all these techniques on the basis of voter need as revealed by his precinct analysis and information obtained through his community contacts:

That the chief election official of every community recruit, appoint, and train registration and polling place staff capable of and willing to respond to diverse citizen needs; that he or she further promote the highest standards of professional conduct by providing at least the federal minimum hours wage to all registration and polling place staff and by selecting staff based on qualifications above and beyond traditional partisanship.

FINDINGS: CHIEF STATE ELECTION OFFICIAL

The LWVEF study found that although the Secretary of State or State Attorney General is usually charged with general responsibility for administering the state election code, in fact, it is one of many duties of his or her office and therefore its implementation is, with few exceptions, decentralized to the local level. Where regular reports are made to a central state authority, moreover, the survey revealed that they generally contain no more than facts and figures regarding registration and voting rates and occasionally information on the kind of voting system used (automatic voting machines, paper ballots, etc.). Furthermore, where the state authority issues guidelines to local officials it usually provides no mechanism for monitoring or enforcing them.

The community study also found that, in the event that local officials are confused about how to interpret any part of the state election code, they must take the initiative in seeking state counsel. Except when their intervention is specifically requested, state authorities generally take little action to insure uniform and liberal interpretations of state election laws at the local level. Finally, state authorities generally do not monitor the way local officals use the extensive discretionary provided by most state election codes.

Therefore, the election systems project committee recommends: That each state locate responsibility for the implementation of state election laws in a single state official or office and that the uniform interpretation and administration of the election code throughout the state be the sole responsibility of that official or office;

That the state election official establish and issue to every local election official minimum standards and performance guidelines; that the state official also establish a supervisory structure within which he or she can evaluate the performance of local officials under the guidelines and take corrective action where the standards are not being met;

That the state authority conduct mandatory training sessions for local officials which cover both the technical aspects of efficiently managing an election system as well as the local officials' legal obligations to aggressively extend the franchise and protect the voting rights of all citizens;

That both the guidelines and the training sessions be developed within the philosophical context of the vote as a right rather than a privilege;

That the chief state election official through an established supervisory structure and regular training sessions keep local election officials abreast of the most current legal opinions on voting rights and establish reporting procedures that will assure local officials' compliance with the most recent court decisions.

FINDINGS: ORGANIZED CITIZEN INITIATIVE IN REGISTRATION AND VOTING

Since election officials have so often been unwilling to support outreach efforts, citizen groups have for many years tried to fill the void by initiating registration and voting services which would meet citizens' needs. The data show, however, that their efforts have often been impeded by the inefficient and restrictive practices of local election officials. Interviews with their representatives also show that citizen organizations recognize problems in the current election system that the officials tend to overlook.

Therefore, the election systems project committee recommends: That citizen organizations add to their present outreach programs an aggressive effort to scrutinize the policies and actions of local election officials during both election and non-election periods;

That citizen organizations demand not only a role in the selection process of the chief local election official in their communities but also adequate representation of their constituencies on local and state boards of election where they exist. Where they do not exist, an effort should be made to create them.

THE ROLE OF POLITICAL PARTIES, MASS MEDIA AND EDUCATIONAL INSTITUTIONS

Although the LWVEF study did not specifically examine the current role these institutions play in our election system, based on the overall findings and the experiences of Committee members, the following recommendations are offered.

Political parties, because of their vital role in a democratic society have a responsibility to see that responsive and responsible election officials are appointed and elected. They must use their considerable influence to insure that election officials use their discretionary power to aggressively recruit voters and to allocate available resources in an manner that expands the electorate. Political parties should further support all efforts to provide adequate funding for local election officials.

Mass media should direct its enormous capabilities toward both informing the public of its voting rights and increasing the visibility and therefore the public's awareness of the system and administrators through which that right must be exercised. Such efforts might include a regular newspaper column devoted to registration and voting information, e.g., the requirements of the law, location and office hours of local registration and polling places, announce-

ment of deadlines, etc. Reporters should cover not just the election but also the operation of local election systems on election day. Officials should allow reporters access to the polls at any time during the polling process.

High schools and colleges, through their curricular or extracurricular programs, should provide information on the legal and administrative requirements pertaining to the franchise. By this means, not only can the crucial facts be made known, but a new regard for the vote as an undeniable right rather than a privilege might be fostered within every American citizen.

MEMBERS OF THE ELECTION SYSTEMS PROJECT ADVISORY COMMITTEE, LEAGUE OF WOMEN VOTERS EDUCATION FUND

COCHAIRMEN

Mrs. Fay Williams, Trustee, League of Women Voters Education Fund.

Hon. Wilson W. Wyatt, Regional Vice President, National Municipal League.

Monsignor Geno Baroni, Director, Center for Urban Ethnic Affairs.

Charles A. Barr, Director, Political and Economic Education, Standard Oil Company.

Robert L. Bennett, Director, American Indian Law Center, University of New Mexico.

Mrs. Lucy Wilson Benson, Chairman, League of Women Voters Education Fund.

Col. C. K. Blum, Chief, Federal Voting Assistance Task Force.

Earl Blumenauer, Assistant to the President for Student Affairs, Portland State University.

Mrs. Willie Campbell, Chairman, Special Research and Projects, League of Women Voters Education Fund.

Michael Cole, Executive Director, Youth Citizenship Fund, Inc.

Steven Galpin, Manager, Community and Government Relations, General Electric Company.

Donald G. Herzberg, Executive Director, Eagleton Institute of Politics, Rutgers University.

Benjamin S. Hite, Formerly Director of Elections, Los Angeles County.

Mrs. Delores C. Huerto, Vice President, United Farm Organization Committee, AFL–CIO.

Mrs. Barbara Jordan, Member, Texas Senate.

Mrs. Charlotte Kemble, Executive Director, Front Lash, Inc.

Dr. Penn Kimball, Graduate School of Journalism, Columbia University.

John Lewis, Executive Director, Voter Education Project, Inc.

John Perkins, Assistant Director, Committee on Political Education, AFL–CIO.

Dr. William J. Pierce, Professor of Law, School of Law, University of Michigan.

Matthew A. Reese, President, Matt Reese & Associates.

John Sayre, Director, Precinct Voting, Republican National Committee (Formerly Chief of the Federal Voting Assistance Task Force).

Richard Scammon, Director, Elections Research Center.

Governor William Scranton, President, National Municipal League.

Mrs. Althea Simmons, Director for Training Programs, NAACP.

Mrs. Albert Sims, Former President, League of Women Voters of Connecticut.

Dr. Richard Smolka, Editor, *Election News*, The American University, Institute of Election Administration.

Mrs. Julia Stuart, Member, National Municipal League Council, Former President, League of Women Voters of the U.S.

Miss Amalia M. Toro, Election Attorney, Office of the Secretary of State, Connecticut.

Richard F. Treadway, Director, U.S. Department of Commerce, Boston Business Services Field Office.

Gus Tyler, Director, Politics, Education & Training, International Ladies Garment Workers Union.

Mrs. Ann Wexler, Director of Voting Rights Activities, Common Cause.

PARTICIPANTS IN COMMUNITY SURVEY:

APPENDIX A

(City and State)

ALABAMA

Birmingham
Auburn
*Montgomery
Tuscaloosa
Mobile

ALASKA

Anchorage
Ketchikan-Gateway
Kodiak
North-Star Borough (Fairbanks)

ARIZONA

*Gila River Indian Reservation
Phoenix
Tucson
Yuma

ARKANSAS

Pine Bluff
*Pulaski County (Little Rock)
Voter Education Project Texarkana, Texas

CALIFORNIA

Union City Alameda County
Berkeley
Sacramento
Eureka
Los Angeles
North San Mateo County
Los Gatos
Fresno
Redding
*San Diego
San Francisco
Tulare County

COLORADO

Arapahoe County
Boulder
Craig & Moffat County
Denver
Ft. Collins
Jefferson County
Durango

CONNECTICUT

Branford
Bridgeport Area
Greenwich
*New Haven
West Hartford
Wilton

DELAWARE

Laurel, Greater
Wilmington, Greater

FLORIDA

Clearwater Area
Dade County
Hillsborough County
Sarasota County
Tallahassee

GEORGIA

Atlanta-Fulton County
Augusta
Macon
Savannah

HAWAII

Honolulu
Hawaii County

IDAHO

*Boise
Idaho Falls
Lewiston
Pocatello

ILLINOIS

*Chicago
Highland Park
Hinsdale-Clarendon Hills-Oak Brook
Morgan County
Peoria
Springfield
Edwardsville

INDIANA

Bloomington
Gary
Indianapolis
South Bend
Fort Wayne-Allen County
Lafayette, Greater
Porter County
Seymour

IOWA

Algona
Des Moines
Keokuk
Mt. Pleasant
Scott County (Davenport)
Sioux City
Waterloo-Cedar Falls

KANSAS

Emporia
Hays
Parsons
Shawnee-Mission
Wichita

KENTUCKY

Boone, Campbell, Kenton Counties
Lexington
Louisville and Jefferson County
Richmond

LOUISIANA

Baton Rouge
Jefferson Parish
New Orleans

MAINE

Bangor
*Lewiston-Auburn
Orono
Portland

MARYLAND

Baltimore City
Baltimore County
Dorchester County
Garrett County
Montgomery County
Prince Georges County

MASSACHUSETTS

Arlington
Boston
*Fall River
*Framingham
New Bedford
Northampton
Plymouth-Kingston
Southbridge-Sturbridge

MICHIGAN

Allen Park
Alpena County
Copper County: Houghton & Ontonag
Jackson County
Flint
Grand Traverse
Kalamazoo Area
*Mt. Pleasant

MINNESOTA

Austin
Roseville
Duluth
Hibbing
Minneapolis
Bloomington

MISSISSIPPI

Jackson
Oxford
Vicksburg-Warren County

MISSOURI

Kansas City
Cape Girardeau County
*Jefferson City-Cole County
Rolla-Phelps County
Springfield
St. Louis

MONTANA

Billings
Helena
Missoula
Ravalli County

Footnote at end of list.

NEBRASKA
Kearney
Lincoln
Omaha

NEVADA
Carson City
Reno

NEW HAMPSHIRE
Concord
Keene
Littleton
Peterborough

NEW JERSEY
Camden County
Cumberland County
Franklin Township
Ridgewood
Morristown Area
Newark
Cranford

NEW MEXICO
Albuquerque
Las Cruces
Santa Fe

NEW YORK
Buffalo
Canton & Potsdam
New Rochelle
New York City
Oyster Bay (L.I.)
Rochester (Monroe County)
Syracuse, Metro Area
Utica
New Platz

NORTH CAROLINA
Charlotte-Mechlenburg
Durham
Raleigh-Wake County
Tryon
Watauga County
Winston-Salem & Forsyth County
Eden-Rockingham County

NORTH DAKOTA
Fargo Area
Grand Forks

OHIO
Bowling Green
Cincinnati Area
Cleveland
Columbus, Metropolitan
Dayton Area, Greater
Kent

OKLAHOMA
Bartlesville
Chickasha
Stillwater
Tulsa

OREGON
Medford; Jackson County
Central Lane County
Deschutes County
East Washington County
Lake Oswego
Portland

PENNSYLVANIA
Clarion County
Erie County
Lancaster County
Pittsburgh Area
Radnor Township
*Scranton

RHODE ISLAND
*Barrington
North Providence

SOUTH CAROLINA
*Charleston
Clemson
Columbia Area
Greenville

SOUTH DAKOTA
Brookings City and County
Rapid City
Vermillion
Yankton County

TENNESSEE
Knoxville and Knox City
*Memphis-Shelby County
Murfreesboro
Nashville

TEXAS
Brazos County
Corpus Christi
Dallas
El Paso
Lubbock
San Antonio Area
Tarrant County
Houston

UTAH
Cedar City
Ogder County
Salt Lake City

VERMONT
Champlain Valley (Burlington)
Montpelier
Woodstock

VIRGINIA
Fairfax Area
Lynchburg
Norfolk-Virginia Beach
Richmond Area

WASHINGTON
*Port Angeles
Seattle
Spokane
Thurston County
Yakima

WEST VIRGINIA
Charleston Area
Huntington Area
Logan Area
Morgantown
Wood County
*Wheeling

WISCONSIN
Dane County
La Crosse
Milwaukee, Creater
Neenah-Menasha
Racine
Stevens Point
Superior
Wisconsin Rapids

WYOMING
Laramee County
Casper
Powell Area

WASHINGTON, D.C.

VIRGIN ISLANDS
St. Thomas

FOOTNOTE

* For purposes of this report, data from these communities are not included in the analysis.

PARTICIPANTS IN THE STATE SURVEY (N=47): APPENDIX B

Alabama	Nebraska
Alaska	Nevada
Arizona	New Hampshire
California	New Jersey *
Colorado	New Mexico
Connecticut	New York
Delaware	North Carolina
Florida	Ohio
Georgia	Oklahoma
Hawaii	Oregon
Idaho *	Pennsylvania
Indiana	Rhode Island
Iowa	South Carolina
Kansas	South Dakota
Kentucky	Tennessee
Louisiana	Texas
Maine	Utah
Maryland	Vermont
Massachusetts	Virginia
Michigan	Washington
Minnesota	West Virginia
Mississippi	Wisconsin
Missouri	Wyoming *
Montana	

FOOTNOTE

* Data from these states were not available for this analysis.

INTERVIEWS COMPLETED: APPENDIX C

	No. of Interviews
Government Officials:	
Chief elections officer of city	86
Chief elections officer of county	158
Mayor	193
City manager	111
President of City Council	99
Chairman of County Commissioners	175
Party Officials:	
Democratic Party chairman	203
Republican Party chairman	200
Third Party chairman	41
Representatives of Citizen Groups:	
League of Women Voters	219
NAACP	118
Labor Council	160
Youth Group	61
Chamber of Commerce	203
American Legion	144
Non-Black Minority Group	63
Total	2,234

APPENDIX D

Number of registration observations:	
Observations at permanent places	299
Observations at temporary places	94
Observations at mobile units	9
Observations at unclassified places	56
Total	458

APPENDIX E

Polling places observed:	
Ethnic white—under $5,000	37
Ethnic white—$5,000 to $10,000	60
Ethnic white—over $10,000	47
Nonethnic white—under $5,000	57
Nonethnic white—$5,000 to $10,000	67
Nonethnic white—over $10,000	70
Spanish speaking—under $5,000	22
Spanish speaking—$5,000 to $10,000	15
Spanish speaking—over $10,000	3
Black—under $5,000	51
Black—$5,000 to $10,000	43
Black—over $10,000	13
Total	484

NIXON ADMINISTRATION ATTEMPT TO EXPLAIN UNEMPLOYMENT BOTH WAYS WON'T WASH

Mr. PROXMIRE. Mr. President, on Friday, the Joint Economic Committee conducted its 13th consecutive hearing on unemployment statistics. This was the 13th time Commissioner Moore has come before the committee to explain the significance of the single statistics that probably has more impact than any other.

Presidents can and often do rise and fall on this statistic. What makes our hearings especially significant is that during virtually the entire year while we have been having these hearings—a year categorized by the administration and others as a recovery period—unemployment has stayed close to the same dismal 6-percent level. Some recovery.

I ask unanimous consent that excerpts from the hearing of last Friday, April 7, be printed in the RECORD.

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

EXCERPT FROM HEARING BEFORE THE JOINT ECONOMIC COMMITTEE, APRIL 7, 1972

Chairman PROXMIRE. The new economic program of President Nixon seems to be working, on the inflation side. This surprises me a little. As a Democrat I have been critical.

You point out that prices have not gone up quite as much since the new economic program went into effect. And you point out that wages have gone up not quite as much, is that correct?

Mr. MOORE. Not quite as much as they did before.

Chairman PROXMIRE. That is my point.

Mr. MOORE. Right.

Chairman PROXMIRE. And, of course, that was the purpose of the freeze, the purpose of the inflation aspect of an economic program. So, that is mighty encouraging.

Represenative CONABLE. Real wages have gone up more, haven't they?

Mr. MOORE. I would say they have been increasing at about the same rate on an hourly basis, but they have gone up more on a weekly basis—because of the increase in the length of the work week, they are taking home more pay because of longer hours.

Chairman PROXMIRE. On the other hand, would it be fair to say that the unemployment level still remains around 6 percent, where it has been since November of 1968, and has been for about 17 months.

Mr. MOORE. Well, there are various ways of saying the same thing. I think the quarterly figures probably give a fair picture of the general levels and trends over a period of time. And the first quarter figure is just slightly lower in terms of the percentage rate on unemployment than it was during last year. But it is only a very slight decline.

Chairman PROXMIRE. So it is working on the inflation end, the new economic program of the President. It is failing, I think dramatically, on the employment end, inasmuch as you have had no improvement, and it has been at a very high level in terms of the experience over the last five or six years. Is that a fair conclusion?

Mr. MOORE. Well, I continue to stress the employment as well as the unemployment side.

Chairman PROXMIRE. Good. And I think this is a very propitious time to do it because of the nature of the statistics during the past months.

Tell me now if this is a fair summary of the situation.

Unemployment for teen-agers is down this month, but it was close to an all-time high a month ago, it is down a little.

Blacks, whose unemployment has been very high, is the same.

Everybody else is worse off, apparently, white males, adult women, the 20 to 24 age group—I am not sure about the latter, but everybody else seems to be worse off this month, is that right?

Mr. MOORE. Well, I will have to point to the married males. They are about the same, 2.8 percent.

Chairman PROXMIRE. What is fascinating about this is that it is kind of a reversal in many of those areas from what we have had before this month. Congressman Conable was pointing that out to me on the price thing, and I think it is true on the employment side, too. In the recent past we have had bad news in some of the areas where we have good news this month, and vice versa. And I think that applies to the interpretation which you gave us of the overall figure to a considerable extent.

Unemployment went up——

Representative CONABLE. About 160,000.

Chairman PROXMIRE. Unemployment went up—you point out that there was nonetheless a big increase in the number of jobs, the job seekers pouring into the market were so great that unemployment rose, is that correct?

Mr. MOORE. Well, again, I think you can always look at the employment and the unemployment side separately, if you add them together, you get the total labor force. But it seems to me it is simplest to think of the number of people who have good jobs increased very substantially over the months, and the number of people seeking jobs without jobs also increased, but relatively modestly. Adding the two together, you get a big increase in the total number in the labor market that are either at work or seeking work. And that was a very substantial increase, better than 750,000.

Chairman PROXMIRE. Is the big difference simply seasonal adjustment?

Mr. MOORE. Well, it may have something to do with the change between February and March. But we regard the March adjustment as reasonably secure.

Chairman PROXMIRE. I am really puzzled, you know. It is hard to understand this kind of a situation. It is worse and it is better, much worse and much better, the same month, the same time. It seems to me that—I am baffled, I have been chairing these hearings and listening to this kind of testimony now, fine testimony, from you, for more than a year. And if I am puzzled, think what the typical citizen who doesn't follow this very closely must be.

Mr. MOORE. I think the only answer I would have to that is that it is simply very important to look at more than just one month. Those figures, because of sampling variations, because of problems with seasonal adjustment, and other things that happen to affect one particular month, vary from month to month quite sharply. But if you look at the trend over a longer period, I think you get a more reliable picture of what is going on in the economy.

And I think, too, you have to look at a variety of other figures which we have as well that have a bearing on the total situation. And doing that, as I said, I think I would characterize the situation as showing a continued rapid rise in employment that we have had at least since last summer, and a fairly steady level with some decline, but not marked, in the volume of unemployment.

Chairman PROXMIRE. Let's square that observation with what your superior in the Labor Department has said. Last month the unemployment dropped to 5.7 percent. Secretary Hodgson said what appeared to be the opposite. I quote from his statement: "As we observed, an extraordinary number of job seekers, especially Vietnam veterans, have been pouring into the labor market, straining the market capacity to absorb them all. As expected, when the inflow of job seekers eased off, the unemployment rate retreated. The 5.7 figure for February released today confirms what we have been saying, and strengthens our faith in President Nixon's economic program."

That was last month, when we had the reverse kind of situation. That was Secretary Hodgson's explanation.

Now which is it, Mr. Moore, this month's explanation or last month's explanation?

Mr. MOORE. Well, again I would like to stick to my view that you have to look at those figures over a longer period than a month.

Chairman PROXMIRE. Last month you could agree with the Secretary of Labor, who is the President's principal political appointment in this area and who is also your boss. This month the statistics are different, and you have to disagree with his last month's interpretation, is that right?

Mr. MOORE. No. I think the basic trend of employment is favorable. It is at a very rapid pace. It is bound, if it keeps up at that pace, to reduce unemployment. Now, it won't reduce unemployment every month, because these numbers just don't behave that way. But I think it is a very strong trend on the unemployment side. And it is also true that it has not so far had very much effect on the unemployment rate.

Chairman PROXMIRE. Well, if faith in the President's economic program was strengthened last month, why isn't it weakened this month.

Mr. MOORE. Well, one of the objectives, it seems to me, that we all want is an increase in the number of people at work, the number of jobs that has occurred. So, I don't see any reason for failing to consider that aspect of the matter.

Chairman PROXMIRE. My time is up.

Mr. Conable.

Representative CONABLE. Dr. Moore, how many people are working now compared to a year ago? That takes up the seasonal adjustment factor, does it not?

Mr. MOORE. Yes. The number employed a year ago was 77.5 million.

Representative CONABLE. Is that total employment or non-agricultural?

Mr. MOORE. That is total employment, 77.5 million in March of 1971. And it is 80.2 million in March of 1972. But I must point out that between December and January we made an adjustment in the estimation procedure which added about 300,000 to the employment total.

Representative CONABLE. That would be 2.7 you had made no adjustment?

Mr. MOORE. It would be 2.4 if you allow for that adjustment, and 2.7 if you don't. And I think you ought to allow for it.

Representative CONABLE. So, employment has risen by at least 2.4 million since a year ago?

Mr. MOORE. Yes, sir.

Representative CONABLE. Now, what has happened to the total number of unemployed people in that same period of time?

Mr. MOORE. Well, it was 5.2 million in March of 1971, and 5.2 million March of 1972. And there the adjustment for the population shift is virtually negligible, so I think we can ignore it.

Representative CONABLE. So, in effect our labor market has grown by 2.4 million during that period of time, taking out the adjustment change in the last month?

Mr. MOORE. That is correct.

Representative CONABLE. What growth rate do we have to have from now on? Can we assume a constant increase in the labor market? What growth rate do we have to have to cut into it roughly 6 percent unemployment that we have got? I have heard it said previously that roughly 4½ percent real growth rate was necessary to absorb the number of people coming into the job market in employment.

Does that figure still hold?

Mr. MOORE. Well, Mr Conable, I am going to stick to my last and avoid forecasts. I do know that the rate of increase in the labor force of 2.4 million is an unusually rapid rate. And we don't expect that over the long run, and we haven't had it in the past over the long run. So, that if the increase in employment of 2.4 million over the past year continues, it seems to me inevitable that it will reduce unemployment.

Representative CONABLE. Our labor force, in other words, has been increasing faster than our population during the same period, is that accurate?

Mr. MOORE. Yes.

Representative CONABLE. What you are saying in effect, then, is that if we maintain this rate of increase in employment, we should see a percentage statistical improvement also?

Mr. MOORE. Yes. But everything depends on what happens to the labor force. And just looking at the past experience, that would seem to be a reasonable prospect. But as I say, I am not able to forecast either the labor force or employment or unemployment.

Representative CONABLE. Now, looking at these statistics that you brought in for this month, do you have any change in your attitude as to what the soft spots in the economy are? Do you see any statistics that are to you as a statistician considerably more significant than the statistics you brought to us last month, or do you consider the trends to simply have maintained themselves during this period of time? Do

you find any areas of change that are significant to you as a statistician, that is what I am saying.

Mr. MOORE. Well, I think the one thing that I have learned in the last months is, I have been studying what has happened in the manufacturing sector. And that is what I mentioned earlier in my statement. That has been, as I say, a sluggish sector in terms of total unemployment.

Representative CONABLE. In terms of something that I think needs some emphasis, the situation in manufacturing seems to me to be undergoing change. And what I see is that with increases in the hiring rates, reductions in the layoff rates, the net accession rate, which is the difference between the hirings and the separations, has gone up to about the level that it had in 1968, which is just about a complete recovery in that rate of accession to manufacturing payrolls. And unless you study those particular statistics which we issued, you are very likely not to observe them in the total employment figures. And that is one of the things that I would say in expressing this point.

Representative CONABLE. Let me ask you if you feel any concern about the rise in the wholesale price index for industrial commodities of .3 percent. That is somewhat higher than it has been, is it not? And this, of course, tends to translate into even greater retail price increase, where this is largely negated in this month's statistics by the decline in the cost of farm products and processed foods. It seems to me that last month we had somewhat the reverse of that, with food prices going up quite sharply, and industrial commodities going up only modestly. At that time, as I recall, you told us that food prices had wide short range swings, and that the significant factor was the industrial commodities. Do you see any concern about the increase to .3 percent? Is that likely to translate itself into a rising spiral of inflation on the CPI ultimately?

Mr. MOORE. Well, the rate of increase in the industrial commodities component of the wholesale price index has been between .3 and .4 ever since December. And it is .3 this month, last month it was .4, and the month before it was .4, and the month before that it was .3. So, it has been in that range.

Now, that is a rate of increase that I think is higher than most of us want to see.

Representative CONABLE. Is that what you call a bulge still, a bulge, following phase 2?

Mr. MOORE. It certainly could be that. We don't really know that until you see the bulge disappear. It is hard to see a bulge while it is still on you, or see whether it is a bulge.

Chairman PROXMIRE. This is about the best meeting that we have had. I am enjoying this a great deal.

I don't mean to interrupt your train of thought, but it looks like it is a good idea to have the same witness back over and over again, because after rehearsal you seem to be in great shape now. It is like having a play on Broadway for seven years, 2,000 performances, by the last performance they are doing pretty well.

Representative CONABLE. Speaking for myself, I can see my bulge. I can't see beyond it.

Mr. CATES. Senator, this is our first anniversary.

Chairman PROXMIRE. You have been here every single month explaining the labor statistics since a year ago. This is literally the 13th time.

I am sorry to interrupt. Go ahead.

Mr. MOORE. Perhaps Mr. Popkin, who is our expert on prices, can offer some further observations on this whole situation.

Mr. POPKIN. I think there are a couple of points here. One of them, which can be seen from the table that Commissioner Moore asked to be placed in the record, is the fact that with respect to the industrials component of the WPI, if you look at its performance during the entire stabilization period from August through March, the increase is at an annual rate of 1.8 percent.

Now, if you break that down—let's say compare phase 2 to the six months before the stabilization policy—you see that these three-tenths and four-tenths monthly changes which Commissioner Moore just cited translate to an annual rate during phase 2 of 4.2 percent, which is 1.5 percentage points below the 5.7 rate that obtained in the six-month just immediately preceding the initiation of the stabilization program.

With respect to the question of the transmission of wholesale price changes, say, for industrials into retail price changes, I think that it has got to be looked at at several levels. The industrial commodities components included crude materials, intermediate materials, and consumer finished goods.

Now, in this particular month, for example, lumber and metals and metal products were very important factors in that three-tenths rise. You see, you have got to go from that stage to their translation into consumer finished goods, and then from there to the CPI. So, the effect of any particular rise in the industrial component really depends on where it is taking place, and what the speed of transmission and the amount of transmission is. By that I mean, let's say, if steel goes up by "X" percent, but steel is 5 percent of the cost of the finished goods that the consumer buys, you don't assume that that "X" percent is passed through.

Representative CONABLE. My time is up, Mr. Chairman.

Thank you.

Chairman PROXMIRE. Dr. Moore, you declined to give Mr. Conable—I thought it was a very significant question and discourse—you declined to give him what the rate of growth was that was necessary to cut into employment, as I understand it, is that correct?

Mr. MOORE. The rate of growth——

Chairman PROXMIRE. The rate of growth of the economy necessary to reduce unemployment.

Mr. MOORE. Yes, sir.

Chairman PROXMIRE. That is such a significant question that I don't know how we can adopt the right kind of policies or indeed appraise the integrity or honesty of President Nixon's 5% unemployment by end of 1972 predicted unless we have some information on prospective economic growth, some way to get an answer to it.

I know you don't like to make predictions. But from what you know from the past, would you be willing to say, then, that a 5 percent level of unemployment by November is a reasonable possibility?

Mr. MOORE. I just don't want to say anything on that.

Chairman PROXMIRE. You can't tell us whether President Nixon is being responsible or not, even in your position.

Mr. MOORE. I believe my position is to present the statistical facts to the——

Chairman PROXMIRE. I have no question about you, your reputation and background, what I am trying to find out is whether the President could have any basis for this, or whether it is just a political statement. You are in the Administration now. You are his principal professional authority. From what you are saying it looks as if the President's statement is just based on politics and not based on any kind of sound economic analysis that is possible, is that right?

Mr. MOORE. No, I don't think that is right.

Chairman PROXMIRE. Why isn't it right? I don't want to be unfair. Why isn't it right?

Mr. MOORE. It is not based on my own economic analysis. He has his own economic advisers, and they provide him with——

Chairman PROXMIRE. You are too modest. Are you telling me that if you had more ability that you would be able to make this kind of conclusion? I won't accept that.

Mr. MOORE. I don't want to be that modest.

Chairman PROXMIRE. You are coming right out of Dickens, you are really humble.

Mr. MOORE. My point is simply that I think the Bureau of Labor Statistics that I represent today should present the facts and should avoid speculation as to what the facts may be six or twelve months in the future.

Chairman PROXMIRE. To get into industrial prices, they rose at a .2 percent rate in March.

Mr. MOORE. .3 percent.

Chairman PROXMIRE. I stand correct, .3 percent. This was almost as great as in the early part of last year.

Now, I indicated that overall there may be some progress, slight progress in the President's inflation fight. Do you think this bears that out? Do you think this month is encouraging in that regard, too?

Mr. MOORE. Well, I think I can only point to this table that shows the rate of increase in industrial——

Chairman PROXMIRE. It looks like I am too biased on the side of the President. I am helping him too much.

Mr. MOORE. There has been a reduction in the rate of increase of industrials, the prices, from 5.7 percent prior to the freeze to 4.2 percent since the freeze was ended. And that is a reduction.

Chairman PROXMIRE. Your employment release states that total employment has risen by 2.4 million since March of 1971, that is, in the last year the total employment has been very encouraging. Can you and your staff tell us how much of this increase has been in full time employment and how much in part time?

Mr. MOORE. Mr. Cates tells me that the increase in full time employment over the year ending in March was 2.1 million, and in part time it was 600,000. Now, each of those figures includes this upward adjustment because of the change in the method of estimation in January.

Chairman PROXMIRE. Would you repeat that?

Mr. MOORE. The two figures?

Chairman PROXMIRE. Yes.

Mr. MOORE. For the full time it is an increase of 2.1 million, and for the part time an increase of 600,000. But both of those figures include the upward adjustment that we made in January for the change in the population base. And I don't have, unless Mr. Cates has it here, if broken down separately for the part time and the full time. Overall it was an upward adjustment of 300,000. So, both of those figures, the 2.1 and the .6, need to be adjusted downward for that factor.

Senator PROXMIRE. The encouraging aspect of this is that most of us rather look at part-time employment when we analyze unemployment. And the fact is that if a person works one hour as I understand it, one hour at any time during a week, he is considered employed.

So that the part-time element does tend to distort the picture pretty badly, unless people understand that.

Mr. MOORE. Oh, yes. But though there is a large number of people employed part time and, the number of people who work only one hour is certainly very small. That has been increasing, though not as rapidly as I indicated the full-time employment is increasing.

Senator PROXMIRE. Dr. Moore, the increase in the labor force is very very large, as you pointed out, over the past year. Have you made any analysis of the factors involved in the increase? What has happened to the number of discouraged workers?

Mr. MOORE. Well, we have figures quarterly on the number of discouraged workers, that is, those who are not in the labor force and

who would like to have a job, but who think there are no jobs available. And those numbers were higher in 1971 and the first quarter of 1972 than they were during 1970, by about 150,000.

And the figure for the first quarter of 1972 is 800,000 in that group. So I think that during the year, that is, during the year, during 1971 as a whole, there has not been any particular trend one way or the other. The figure for the first quarter of 1971 was just about 800,000 also. But there has not been any upward trend in the number of discouraged workers.

Senator PROXMIRE. We have been interested, as you know, in this committee more than the Administration has been, because they have done very little in it, and we have done a lot. And maybe we have exaggerated it, but we have been interested in the effects of the military program on employment and unemployment.

There was almost nothing in the President's economic report until this year, when they had, I think, one or two pages out of one hundred and sixty, and those pages were very skimpy. And we had a very substantial part of our report dealing with that. What proportion of unemployment can be charged to defense cutbacks? Can you give me a number? I have seen a number as low as .1 of 1-percent, although the Administration, without much analysis, has indicated that this is one of the principal reasons for the difficulty in improving the unemployment picture.

Mr. MOORE. I don't have a figure in my head, sir, on that.

Senator PROXMIRE. Would you say that .1 of 1 percent sounds out of line? Would you dispute it?

Mr. MOORE. I would say it sounds low to me, but I just don't have the numbers in mind.

Senator PROXMIRE. It sounds low, but it is possible?

The best our staff can come to is .1 of 1 percent.

Let me proceed a little further. Actual total outlays for defense have not been reduced at all. There has been a shift in the amounts being proposed to be spent up $6 billion in the coming year. And it is true there had previously been a sharp cut in real terms because of inflation, of course. And there had been a reduction, an enormous reduction in the number of people in the Armed Services from 3.5 million to 2.4 million. Also, because of pay increases there has been no substantial change in the gross amount of pay. Is it right or wrong to attribute unemployment to these military decisions when virtually no dollar cut has been made in defense, and we can anticipate an increase?

Mr. MOORE. I would make this observation, that in any period when substantial shifts are occurring in the direction of the economy away from defense spending and toward the other spending, and out of the Armed Forces and into the labor force, those shifts require adjustments. And they usually take some time to make. And one of the results of them is that people are looking for jobs for longer periods of time, and they are more likely to end up in the unemployment count that we make than in times when everything is going along more or less smoothly.

So I think a period of shifting priorities is one in which more people will be looking for other types of work than what they have had. And certainly in the aerospace industry that has been a big factor.

Senator PROXMIRE. You know how much I respect you as an economist. And what you say is certainly the conventional wisdom. But how do you account for what happened right after World War II? At that time we cut about $70 billion from the defense budget. And it was a far smaller economy, about a quarter of the size of what the economy is now in dollar terms.

We reduced the military by 10 to 12 million, not one and a half million. But unemployment went down, not up. So why is it that with virtually no dollar cut in defense and only one million men out from the Armed Forces in two or more years, why is there any unemployment due to this fact?

Mr. MOORE. Well, I think one great difference between World War II, or the post-World War II, immediately after the war, and now is that then there had been a long period of several years of suppressed demand. There were cutbacks of all sorts in consumer goods production, and demands on the part of consumers were building up. And the consumers went into the market to get goods immediately after the war, that had been controlled prior to that. And that stimulated the market for private production and stimulated the employment in those industries very rapidly.

Now, herein recent years there has been no such cutting back on the demand side that accompanied the war period, the building up of the Vietnam period. And consequently I don't believe there is anything like the amount of pent-up demand that there was during and immediately after World War II.

Senator PROXMIRE. I think you have made the best possible case for a very impossible position. It is a fine defense, but my common sense doesn't let me accept it, that you could have a situation in one case where you had an enormous and dramatic sudden reduction of military spending from 50 percent of our gross national product to almost zero with, as I say, no increase in unemployment, and in this case very little change.

And the Administration was saying that the reason that unemployment is so bad is because the war, the Vietnam war.

But I have detained you a long time. I have just a couple more questions I would like to ask about wholesale prices.

With the decline in wholesale prices for farm products—from 120.2 to 118.6 seasonally adjusted in one month—and the decline of 119.6 to 119.1 in over-all farm products, processed food and feed category, how do you explain the continued rise in wholesale prices?

Mr. MOORE. You mean the wholesale prices of farm products?

Senator PROXMIRE. No, the overall rise in wholesale prices. Everybody is saying, the Administration is saying, well, prices have gone up because of the food prices, until recently they were saying that that was the explanation. Now we have a different situation, that our explanation just doesn't apply now.

Mr. MOORE. I think that non-food prices, the prices of goods other than foods, did continue to go up. It is only the farm products and the foods that declined. And all I can say is that one declined and the other went up.

Senator PROXMIRE. We know that. But you tell us why.

Mr. MOORE. Well, I really don't understand your question. Are you asking why farm products prices went down and other prices continued to go up?

Senator PROXMIRE. I am asking you to explain what actually happened.

Mr. MOORE. This is what actually happened. The farm prices in March went down at the wholesale level, and the prices of non-farm products continued to rise.

Senator PROXMIRE. Are you telling me that there is no explanation? And if there isn't what is the Congress and the public going to do? If anybody in the country can explain it, you can. And I don't mean that as sarcasm, at all. You are the man that the President has picked, and he has wisely picked. And if you can't explain it, it is inexplicable. It is like even God doesn't have an answer.

Mr. MOORE. Let me make an attempt and maybe Mr. Popkin can help me out.

Senator PROXMIRE. Call on the Angel Gabriel.

Mr. MOORE. In the case of non-farm products I think there has been a continued increase in the money volume of demand. Incomes have continued to rise, they haven't been dropping, at all.

And with that demand, the prices have tended to keep on going up. And that is despite the controls that have been put on prices, they haven't stopped the rise completely.

On the other hand——

Senator PROXMIRE. Are you saying that in a situation in which we have 25 percent of our capacity idle, that there has been a demand that is driving up prices?

Mr. MOORE. The money volume of demand has continued to go up all through this two or three year period quarter by quarter. So I think that has been a factor.

Personal incomes have continued to go up all through the period, and they are still rising relatively rapidly.

So that is the background of the demand side.

Now, with reference to farm products, why did they go down this month? I guess all I can say—and maybe Mr. Popkin can amplify it—is that farm product prices fluctuate, they go up rapidly in one month, and stop going up or decline in another month. And they have been doing that all during the past year. And they have kept on doing it this month. That is, there was a very rapid rise in February, and there was a small decline in March.

Now, what explains the fluctuations in farm prices, and why they fluctuate more than industrial commodity prices, is a very big subject. It has to do with the shifts in the supply of farm products from month to month. But in general, I think the supply situation changes much more rapidly in the farm sector than it does in the industrial sector.

Senator PROXMIRE. Does Mr. Popkin want to add to that?

Mr. POPKIN. I think it does get back to supply and demand. But the supply curve is usually defined to include costs of products. And the shifts in the farm area are much greater, and seem to have a lot to do with the large fluctuations that we observe in the farm product prices. But nonetheless there are shifts in demand and supply curves in the industrial area. I think, for example, that within the industrials group there were declines from February to March for two major groups, rubber and plastic products, and chemicals and allied products. And I guess you would ask, why did those products go down and the rest of the industrials go up? And I think it does get back to supply and demand.

Again the supply curve is defined as including returns to all factors of production.

Senator PROXMIRE. I think that is a good answer. But we have to terminate this. Let me just ask the final question.

Dr. Moore, an article appeared in the Wall Street Journal on March 31, and I am going to quote it to you and ask your response:

"Specialty steelmakers, eager to cash in on an upturn in demand, are pushing through across-the-board price boosts of one of their highest volume products, stainless steel sheet. As is typical in the industry. . . . increases don't result from higher list prices but a reduction in discounts."

The article goes on to say that discounts are being reduced by 5 percent, which is effectively a 5 percent price increase to users of stainless steel. I intend to question Mr. Grayson next week when we are having our hearings on the Prseident's program on inflation—and we will have Mr. Meany later, of course—I intend to question Mr. Grayson next week on the Price Commission's role in this increase.

However, I would like to know from you,

Dr. Moore, how this 5 percent increase in stainless steel prices will be reflected in the wholesale price index. How does BLS collect price information, from the seller at list discount prices or from the buyer?

If fluctuations and discounts are not taken into account, how can the Wholesale or Consumer Price Indexes accurately reflect actual prices being paid? How can the WPI or CPI possibly measure the success or failure of a wage-price control program?

Mr. MOORE. Well, I can only give you a general answer to that question. We can supply more details for the record, if you wish. The Wholesale Price Index is based in part on list prices. But it is a relatively small part. And over-all—

Mr. POPKIN. When you say "based on list prices" that statement reflects the fact that for some commodities we have to rely on prices published in trade journals. And we don't go directly to sellers in those areas.

In other areas were we do go to sellers, we may in fact get a list price.

But I would like to point out that the questionnaire that is used in collecting wholesale prices asks for all discounts and changes in them. So it isn't that we go out to collect list prices, we go out to collect transaction prices. We don't always get them.

And our guess is that the portion of the wholesale price index for which we either have to rely on trade publications or for which sellers do not, and for which we feel, report transactions prices, but in fact report list prices, that portion we would estimate to be 20 percent of the weight of the index. But it is by no means a pervasive problem. We know the sectors where we have some problems, and we are working on them.

In the January Wholesale Price Index, for example, we are making a transition to a new series of transaction prices for aluminum ingots collected from buyers because we knew we had some trouble on the sellers' side. So it is not a pervasive problem as it affects about 20 percent of the index, but the Bureau of Labor Statistics does always seek to get the transactions price.

Mr. MOORE. I think we should supply an answer to your question about steel sheets. We will do that for the record. I don't have that information.

Senator PROXMIRE. Yes, I would like to get that. That would be very helpful, for the record.

You say you think this may be the exception?

Mr. MOORE. Well, as Mr. Popkin said, about 20 percent of the wholesale price index is based on list prices. And the other 20 percent is, we think, a good approximation to the actual transaction price. And we are working on the 20 percent. But it is not 100 percent by any means.

Senator PROXMIRE. I said that was the last question. But let me just observe that I am amazed and astounded, Dr. Moore, that you would attribute the continued increase in industrial prices to an excess of demand when a million people are unemployed and industry is operating at 75 percent of capacity. It is just very, very hard for me to understand that. And I would challenge any economist to support that.

Mr. MOORE. If I may remind you, I said money demand, not physical demand.

Senator PROXMIRE. Demand is demand is demand, as Gertrude Stein might say.

Mr. MOORE. I think that is right. But if you think of the amount of money that people have at their disposal to spend, that has increased continuously for months and years. And there has been no reduction in that money demand in that sense.

Senator PROXMIRE. But that increased from '62 to '63 without this kind of consequence, and we were in a situation in which there was about the same amount of employment, but more capacity utilization, and prices were relative stable.

Mr. MOORE. Well, it increased very much more rapidly after '65, the money demand.

Senator PROXMIRE. Mr. Moore, thank you very much. I think this has been an excellent hearing, a most interesting and useful hearing, and a very appropriate one for our first anniversary.

Mr. MOORE. Thank you very much.

Senator PROXMIRE. The committee will stand adjourned until next month. And we will be delighted to have you back.

(Thereupon, at 12:05 p.m., the committee adjourned, subject to the call of the Chair.)

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore (Mr. GAMBRELL). Is there further morning business? If not, morning business is concluded.

WAR POWERS ACT

The ACTING PRESIDENT pro tempore (Mr. GAMBRELL). Under the previous order, the Chair now lays before the Senate the unfinished business, S. 2956, which the clerk will state.

The assistant legislative clerk read as follows:

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 Senate resumed the consideration of the bill.

The ACTING PRESIDENT pro tempore. The pending question is the motion by the Senator from Nebraska (Mr. HRUSKA) to refer the bill to the Committee on the Judiciary.

Time for the remainder of the day will be equally divided and controlled by the Senator from Nebraska (Mr. HRUSKA) and the Senator from Virginia (Mr. SPONG).

Who yields time?

CALL OF THE ROLL

Mr. SPONG. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time for the quorum call be equally divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll, and the following Senators answered to their names:

[No. 136 Leg.]

Aiken	Cotton	McGee
Allen	Dominick	Metcalf
Bellmon	Gambrell	Ribicoff
Boggs	Griffin	Spong
Byrd, Harry F., Jr.	Gurney	Stennis
	Hatfield	Talmadge
Byrd, Robert C.	Hruska	Young
Cook	Javits	
Cooper	Mansfield	

The PRESIDING OFFICER (Mr. ALLEN). A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Allott	Fong	Pearson
Beall	Fulbright	Pell
Bennett	Goldwater	Proxmire
Bentsen	Hansen	Randolph
Bible	Harris	Schweiker
Brock	Hart	Scott
Burdick	Hughes	Smith
Cannon	Inouye	Stafford
Case	Jordan, Idaho	Stevens
Chiles	Kennedy	Stevenson
Church	Magnuson	Symington
Curtis	McGovern	Taft
Eagleton	Montoya	Thurmond
Eastland	Moss	Tunney
Ellender	Nelson	
Ervin	Packwood	

Mr. ROBERT C. BYRD. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG), the Senator from Indiana (Mr. HARTKE), the Senator from Indiana (Mr. BAYH), and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. FANNIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. SAXBE), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from Connecticut (Mr. WEICKER) is detained on official business.

The PRESIDING OFFICER (Mr. HUGHES). A quorum is present.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. HUGHES). The Chair, on behalf of the Vice President, pursuant to Public Law 91–129, appoints the distinguished Senator from Florida (Mr. CHILES) to the Commission on Government Procurement, vice the distinguished Senator from Washington (Mr. JACKSON), resigned.

MESSAGES FROM THE PRESIDENT— APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated

to the Senate by Mr. Leonard, one of his secretaries, and he announced that on April 6, 1972, the President had approved and signed the act (S. 1975) to change the minimum age qualification for serving as a juror in Federal courts from 21 years of age to 18 years of age.

REPORT OF CORPORATION FOR PUBLIC BROADCASTING—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. HUGHES) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Commerce:

To the Congress of the United States:

In accordance with Section 396(i) of the Public Broadcasting Act of 1967, as amended, I hereby transmit the Annual Report of the Corporation for Public Broadcasting covering the fiscal year July 1, 1970 to June 30, 1971.

RICHARD NIXON.

The WHITE HOUSE, *April 10, 1972.*

EXECUTIVE MESSAGES REFERRED

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

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

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 12749) to authorize appropriations for the saline water conversion program for fiscal year 1973.

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. SPONG. Mr. President, I shall have to leave the Senate floor later this afternoon to attend the funeral of former Governor of Virginia, John S. Battle.

In my absence, I should like to designate the Senator from New York (Mr. JAVITS) or the Senator from Mississippi (Mr. STENNIS) to control the time on behalf of the proponents and floor managers of the bill.

Mr. President, I now yield to the Senator from Mississippi (Mr. STENNIS) for such time as he may wish to take on the bill.

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

Mr. JAVITS. Mr. President, I ask unanimous consent that the time for the quorum be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STENNIS. 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. STENNIS. Mr. President, it has already been my privilege several times, beginning last year, I believe in May, when I introduced a similar resolution to the one now being debated, to have addressed the Senate on almost all phases of the question. But it is so important, I wanted some more time to discuss various points, especially in light of the debate we have had, and also to say something special with respect to the matter of referring it now, after all this time, to another committee of the Senate.

I emphasize that I have great regard for the membership of the Committee on the Judiciary. Its chairman is my colleague from my State. He and I have worked together on many matters, as is true with reference to many of the committee's members; but I do not think, at this time, on this subject, that there is enough reason for it to be referred to the Committee on the Judiciary.

Mr. President, before proceeding any further I want to mention again for the record my own background with reference to the subject of this bill and my legislative record over the years.

Long before I became chairman of the Armed Services Committee—and I have been here during two wars and got here soon after World War II—I very strongly and vigorously backed and supported the executive head of the Government with reference to our military program. Once we got into the war in Korea and once we got into the war in Vietnam, I felt that we were committed and that we had joined the issue. Men had been sent forth to battle, and some had died. As I saw it, we could not afford to be forced out.

So I have consistently, all the way through, backed all wars, including the war that we are in now, and the actions of President Nixon and those of his predecessors.

I have handled for several years the procurement bills for all of the military items, planes, tanks, guns, missiles, ammunition, and everything else that goes to make up the instruments of war.

So, all of my leaning, my background, and my history in the Senate has been on that basis. As I say, it is consistent. It has always leaned that way with the exception of one thing—that I have just never believed that this Nation's manpower and all of its resources ought to be committed to war—and when I say committed to war, I mean to put at stake the life and the blood and the resources of the country as a whole—unless there has been an authorization therefor by the Congress of the United States. And that is the way I feel now.

Of course, we have to make exceptions for things that are of a real and genuine emergency nature. And I make those exceptions in this bill. The bill attempts to spell them out. We cannot have a President that is a mere figurehead, and we cannot have a President that is different from those others in the world in which we live. We have got to have a man of courage and action, a man who is willing to exercise power. He has got to be a man that is not timid in exercising the power that may be a little in the gray area.

I think that the pending resolution fully recognizes those facts. However, after all emergency has been allowed for and after all of the matters of giving meaning to our policy have been allowed for, I still believe it is just human nature to believe that the resources of our Nation, including manpower, ought not to be committed to war so that the President would have to follow through whether he wants to or not, until after the Nation and the people of the Nation have had the benefit of the judgment and the exercise of responsibility of Congress.

I think that latter point is highly important. I think the people should have the benefit of the judgment and the exercise of responsibility of the duly elected representatives of the people in Congress, both the Members of the House of Representatives and the Members of the Senate. The people are entitled to the benefit of that judgment. The Members of the House and the Members of the Senate are the ones that the people know personally, that a great many of them know personally. The people know their records rather intimately.

The representatives of the people are the ones who have gone out before the people and have made promises and assured them as to what they would do under certain circumstances and what their philosophy of government is. The people learn to know what is in the minds of their representatives, their integrity, their purposes, and at least something about them. They have a better opportunity to feel that closeness and responsibility than they have in the case of a President, although they are entitled to the judgment and the responsibility of the President, also.

Under our system of Government, the plain mandates of the Constitution say that the Congress shall have the power to declare war. It is the mandate of the Constitution, and it is commonsense. It is of practical value to provide that before the Nation and its resources are committed to war, the people will have the benefit of the judgment and the responsibility of the ones they have chosen to office under the Constitution, and under that provision that I have just quoted. The people have not had the benefit of that since World War II started.

I have a feeling I know how it happened and why we got off the track. I will just review it briefly now to have it in the RECORD for the benefit of any Members who have not been here during those periods, so that they may read my remarks.

Soon after World War II, we well know that with the advent of the atomic bomb and other nuclear weapons, it was thought that there would not be time for Congress to act and that everything was canceled out with respect to that matter. I have heard it more or less ridiculed here on the floor of the Senate. I have heard it said that talk about Con-

gress having to declare war was totally unrealistic in view of the missile age.

We have found that these missiles are still very much a part of our life and a part of our defense and a part of our deterrence. But we are spending billions of dollars every year preparing conventional power, military power, for possible conventional wars fought with the older style of weapons which are far less powerful than nuclear weapons or atomic bombs.

After all, there was plenty of time to declare war in this war that we are now engaged in. It was not a matter of haste. I am not trying to blame anyone. I would not put my name on a resolution at this time unless it excepted the present war from its terms. I am not trying to lay the blame. But certainly we cannot fail to see that the present war shows the need for the application of a sound rule.

I come to the argument that, "Well, you should not try to limit the President's power." We cannot limit the powers of the President that have been granted to him by the Constitution. I would not hear of that or try. Many Senators have heard me urge in this Chamber many times to keep the responsibility regarding the conduct of this war in the President of the United States; he is Commander in Chief in combat, and in conduct of the war, the war plans, and everything that goes with it rests on him. I would not detract one bit from that, but he does not have the sole power under all the circumstances to commit us to war, never has had, and we would have to amend the Constitution before we could give him any such sole power.

We have to yield to the facts, but the facts of life do not in all cases follow cases like Pearl Harbor. In most cases, Congress would still have the responsibility.

In the exercise of that responsibility on this resolution I do not think that we have to refer or should now refer this resolution that is well understood to the Committee on the Judiciary. After all, that argument swings for the most part on the argument that the Judiciary Committee under rule XXV has jurisdiction over "constitutional amendments." That is very proper. But this is by no means a constitutional amendment. It has some constitutional issues in it, but most bills which come here for consideration have constitutional issues in them.

Over and over again we have matters that come up that have constitutional issues, sometimes in seven or eight different fields, and if we had to refer every bill in which there is a constitutional question to the Committee on the Judiciary, most of the major bills at least would have to go to that committee. We have bills here every day involving interstate commerce, and that certainly is clearly a constitutional matter and those bills are not referred to the Committee on the Judiciary.

I think the history that will be developed by other proponents of this resolution about what happened over a period of decades, for many years, with reference to bills of this kind, shows that they go to the Committee on Foreign Relations which is the committee to which this resolution was sent.

Mr. President, over a year ago I introduced the resolution that I proposed. I think that was in May of 1971, and I think I had spoken on it once before and made the point in January 1971 that we ought not to try hastily to pass this measure, but give it time to sink into the minds, the thinking channels of the Nation. I proposed that we delay it for a year. It was not altogether my suggestion, but it was delayed. It required some time and there have been some exhausting hearings conducted in connection with that measure. The scholars of this country have been attracted to it, Members of this body have been attracted to it and the press has been attracted to it.

The resolution has been written and rewritten several times, as it should have been in keeping with the developing thought on the subject, and it has been molded by the Committee on Foreign Relations into composite language and principles with definite meanings. It has been analyzed and reanalyzed, and now it is being debated in full and at length in this body. We cannot close our eyes to that fact, and we should not close our eyes to the further fact, that if this goes to the Committee on the Judiciary now and there are hearings again on both sides of it; with all deference, it would be largely a rerun of what has been said. There would be some differences of opinion, and it will not dry up those differences, and there will be differences of opinion on the floor, and those differences will not be dried up, nor will they be changed substantially, so we will be right back where we started.

Again, with all deference to the Committee on the Judiciary, I do not think this is a legal question anyway, not primarily a legal question. Now we will find all kinds of cases. I have read many of them in the books when matters came before the Court concerning various wars, and some things that happened prior to the war, some during the war, and some after it. Some questions involved the legality of the war and involved Presidential power. Often they were adjudicated after the fact, and, naturally, in our contests with other nations, the courts tend to decide cases in our favor. That is no reflection on the courts.

My point is that this is not primarily a legal question. One can find authorities both ways. This is primarily a practical matter, not limiting the President, but a practical matter of getting machinery on the books about what Congress is going to do to fulfill its responsibility, and that is what it comes down to. The question is whether Congress is going to take care of its own responsibilities, and that would bring the matter to a head.

If we can get on the books as to how far the words go—and I do not think it is controlling because there still will be some ground where the President would have to act, and I am willing for him to do so—but if we can get on the books the principle that Congress has to act before this Nation is really committed to a war, then we have made a long step forward, we are filling our responsibilities, and we are making it more likely that these judgments will be sound.

Mr. President, if you leave to one man all these decisions he will find himself day by day inching toward the final conclusion that he cannot turn back. Events push him along and a lot of his advisers push him along, and the first thing you know there is no way for him to turn back. That is the way I see it. We are not taking this responsibility from the President. Let us not be too technical and academic. There is not going to be any declaration by Congress unless the President asks for it. He is No. 1, he is the leader, and he is the Executive head of the Nation. He is the head of the foreign policy and there will not be, never has been, and never will be under our system a declaration of war by Congress unless the President is sharing that responsibility and recommending it and giving the reason.

Sometimes, as in Pearl Harbor, I think that decision was automatic.

But I remember when I was just a boy a decision that was not automatic. In World War I President Wilson had just been up for reelection in 1916 and his critics called him a war President then and said that while he proclaimed being for peace, he prepared for war. They showed that he wanted to build some ships and make other preparations. But when the showdown came, he took a lead. However, it was a debatable question. It had been a debatable question. They tried to defeat him, because he had been urging preparedness—although he was a man of peace—and then the climax came in 1917 when he said he could no longer be true to his trust unless he asked for a declaration of war. Well, by then, the sentiment had worked up tremendously, and when he took the lead, that made a great difference.

As I remember, there were only six in this body who voted against that declaration of war, and some of them were defeated for reelection, because of that vote. It shows how strong the sentiment became, but it was the leadership of President Wilson that laid the groundwork for the sentiment.

That will be true in all cases. No President can avoid being in on that decision, and I think that is right. It is the joint responsibility of the Executive and the Congress that the people are entitled to, and the people are entitled to the exercise by both those branches of Government before they are committed, because they do not have a direct vote. They do not have a direct say-so. They have an indirect one later, but many times it is too late. They do not have it until the election comes up.

So I think we are dealing with a very delicate matter here. We are dealing with a highly important matter.

I said this in a previous speech. The question came up when we were going into the so-called mutual defense agreements. I say so called because some of them involved countries that would have very little ability to defend us, but we had others where there was tremendous power to help defend us, and where we felt a need—I am thinking of NATO now—of having our allies bound in an agreement that we felt was necessary for the peace of the world and for our pro-

tection and theirs. I am very strongly for NATO, and have always been. I have taken that position here when attempts were made to put a limitation on our support.

But when the provisions for those defense treaties and mutual assistance agreements came up, they always had the clause in them that we would respond under our constitutional processes. The question was asked on the floor: What did that clause mean? I read that on the floor at length the last time I spoke. The answer was that "constitutional processes" included the idea of a declaration of war. So we are standing on sound ground here historically by what has happened and by what has been the understanding—a declaration of war by the Congress, making allowances, as we always have, for emergency matters that can come up in a hundred different ways, and the President just has to be the judge of what is an emergency matter.

Moving on now to the motion to refer to a committee that has been made, this bill is not a constitutional amendment. It is just a proposed statute. It has not followed any of the amendment procedures of article V of the Constitution, but is explicitly intended to be a statute pursuant to Congress power under the necessary and proper clause of article I, section 8. This purpose and authority is explicitly recognized in section 2 of the bill itself. If all bills which, under the necessary and proper clauses, attempted to provide a gloss to the Constitution were referred to the Judiciary Committee, then its jurisdiction would encompass practically the entire business of the Senate.

I know some of the opponents of the bill will, of course, argue that the bill is actually a constitutional amendment in sheep's clothing. but to refer the bill to the Judiciary Committee merely on these grounds is an attempt to elevate a technical argument to a jurisdictional principle.

Under all the precedents that I understand can be found—I have not personally looked at all those procedents—this bill has already followed the course that the Senate has always used under its written rules, and is back here for consideration on the merits, for the consideration of such amendments as may be offered, and for disposition by this body on the question of final passage.

I respectfully submit to those who would defer things here, delay them by referring to another committee, that the argument is without substance, that it is outside the boundaries of the rules of the Senate, and is beyond the logic and meaning and substance of the bill itself. So I hope now we are not going to decide anything by referring to committee. That will not decide a thing in the world. It will just bring us up to the decision point where we now are, and then back off.

I tell you, Mr. President, I believe the people of this Nation are listening. I believe they are expecting an answer of some kind. If this bill is defeated, I will not have any complaint. I will not have an ill feeling toward anyone. But I believe we owe the people a judgment on this matter, and particularly since the issue has been raised, since the authors and the committee have raised the issue, brought the matter to the floor, and the leadership has set it up for debate, and the Senate has agreed to that debate. We are having that debate. Now to follow the course in the proposal made here would take out the horses, hang up the harness. I do not think there is common sense and reason behind it, and I think it will be misunderstood.

The present war is by no means over. I am not trying to make the bill apply to the present war. I would not sign a resolution until it was conclusive and clear cut on the point that we are not to pass on the beginning of the war, or blaming anyone, or arguing what should be done now. That is not in this bill. It is being excepted. This is an effort not to get into such a predicament again, but primarily it is something we owe to the people of this country.

To send it off to a committee now, assuming we are to have hearings and everything else, and then bring it back—and we would not know when and the people would not know when—would mean it would probably happen right in the middle of the argument about the military procurement bill, right in the middle of the SALT talks, and right in the middle of many other matters that involve decisions and far-reaching policies.

If we are going to decide this matter, I think we ought to decide it right now. We have the facts.

We have the provisions of the resolution here. If they are not acceptable to the Senate, let us amend it. But let us pass on these matters here while we have a chance to, and tell the American people that we are willing to pass on them. And I hope, in the process of passing on them, we will pass the bill itself. Then I believe we will be standing—in fact, I am certain we will be standing—on sounder ground. We will have corrected the matter to the degree that, having gone to war without having gone through this process—and I blame myself only for not having gone through it—we will let the people know that that is not going to happen again; and I believe that would do more than anything else we can do now, this summer, to bring the people back together with a better understanding of the situation we have, and will help us to cope better with the situation with reference to this present war. The present war is exempted, but we have to cope with it nevertheless in the form of public opinion. And we are not anywhere near out of this war yet, in my judgment.

So, Mr. President, this is no routine matter, and I hope it will not be considered as such. I hope that we will not, in a careless moment, so to speak, refer the matter to another committee and cause delay and the disjoining of the thought and decisionmaking processes. I hope we will face up to the matter now.

We are not trying to detract one bit from the President's responsibility wherein he has sole authority to meet emergencies. I do not want to detract from that, and I do not think this resolution does so. It does seek to draw the line between the area of his sole powers and the area where he shares responsibility with Congress. Whenever it becomes the case that the Nation may actually become committed to war, the President has joint responsibilities with Congress; and those words "actually become committed to war," as I use them and as they were used by the committee, mean this: An act of war and the committing of the manpower of this Nation to go to war; an act calling on the resources of this Nation and committing them to war—in other words, an act putting in issue the manpower and the resources of this Nation.

Certainly this is a matter about which the people of this Nation are entitled to the judgment and the exercise of responsibility of their elected and chosen officials here, in whom they have put their trust and confidence; and I believe in the end that is exactly what will happen if this bill is passed.

Mr. JAVITS. Mr. President, I wish to comment in some detail about the splendid position of the Senator from Mississippi and his argument, because they have inspired some thoughts in me, but at the moment I would just like to thank the Senator, not only for his statement and his support, but for the very high patriotism he has just evidenced, and comment further a little while later.

Mr. STENNIS. I thank the Senator very much for his comments, and for his fine work in connection with this matter. As he always does, he has shown his splendid ability and capability and his diligence and thoroughness in connection with this measure, and I commend him very highly.

Mr. SPONG. Mr. President, I should like to join the Senator from New York in his commendation and thanks for the remarks of the Senator from Mississippi this morning. The Senator from Mississippi has again contributed immeasurably to this debate. As is his custom, he has cut to the heart of the motion that is before us, the question of whether this measure should or should not be referred to the Committee on the Judiciary. He has said that referral would be converting a tactical position into a jurisdictional question. I agree with that.

Furthermore, I believe that we would be going against precedent in the reference, of the legislation to the Committee on the Judiciary.

I wish I could comment further upon what the Senator from Mississippi has said, but I must leave the floor at 2 o'clock. Again, however, I thank the Senator for going to the heart of the reference question.

Mr. STENNIS. I thank the Senator very much. I am sorry I kept the floor as long as I did, and ran so far into his time.

Mr. SPONG. The Senator from Mississippi did not trespass at all upon my time.

Mr. President, I would like to comment briefly on some matters that were discussed last week.

Implicit in much of the debate was the idea that because the President had acted to commit U.S. troops to hostilities without a declaration of war almost 200

times, a precedent has been established, a precedent which should stand.

I believe this is a fallacious argument.

First of all, just because something has happened does not mean that it is right or good.

Second, in a number of those cases in which the President committed troops to hostilities without a declaration of war, there was disapproval and dissention over the actions. For example, President Wilson was criticized in Congress for waging war in both North Russia and Siberia after allied expeditions were sent to Murmansk and Archangel in 1918–20. Resolutions were introduced in Congress requesting immediate withdrawal of forces from Nicaragua after the United States employed military occupation to end the civil war there in 1926–33. In order to preclude divisiveness over such military moves abroad, I believe we should pass this bill.

Third, the need for action on war powers legislation is greater today than it has ever been. We have more commitments in more parts of the world than at any time in our history. The Symington Subcommittee on National Commitments Abroad documenteod these in detail. With these many commitments the likelihood of additional situations arising in which the President will have to commit U.S. forces to hostilities is enhanced. Consequently, we should be prepared with a procedure for dealing with these situations.

Also, I believe that the situations arising today are of a different magnitude than most of the situations of earlier days. Moves against pirates are, for example, quite different from Korea, from Vietnam. As Prof. Alfred Kelly of Wayne State University noted during hearings, the sending of troops to Korea and the stationing of seven divisions in Germany marked quite a departure from previous activities. He said:

"I would contend that from a constitutional point of view this move (stationing troops in Germany) was entirely unprecedented. Seen from our vantage point now, it constituted a dangerous break in constitutional continuity. For never before had a President moved armed forces of such force, number and charcater as to imply total national military commitment outside confines of the United States or its territorial environs and possessions, let alone overseas to the ancient cockpit of European wars. To compare this situation with President Wilson's landing of Marines at Vera Cruz in 1914, or the first Roosevelt's intervention in Santo Domingo in 1904 is to ignore power relations, war potential, commitment, and geography. Again, the Executive's decision cannot be condemned merely as an act of irresponsible Presidential despotism. The decision, with all its tragic potential, was in a sense necessary. It was in support of the North Atlantic Alliance, for one thing. Furthermore, there was not technically a state of peace in Germany as yet. But it exposed a certain tragic inconsistency between the ancient peace-war balance between Congress and the Executive in the American constitutional system and the exigencies of the decisionmaking process in the marginal area between diplomacy and war inherent in the defense of the new American power system

For these reasons, I do not believe that past practices either can or should provide a precedent for maintaining the status quo as far as the exercise of war powers by the President and Congress is concerned.

Furthermore, I do not believe that this bill should be referred to the Senate Judiciary Committee.

First, the bill is not a constitutional amendment. It is instead a statute pursuant to Congress' power under the necessary and proper clause of the Constitution.

Second, the standing rules of the Senate suggest no reason why the legislation should be referred to that committee. The Judiciary Committee has jurisdiction over judicial proceedings, civil and criminal generally; constitutional amendments; Federal courts and judges; local courts in the territories and possessions; revision and codification of the statutes of the United States; national penitentiaries; protection of trade and commerce against unlawful restraints and monopolies; holidays and celebrations; bankruptcy, mutiny, espionage, and counterfeiting; State and territorial boundary lines; meetings of Congress, attendance of Members and their acceptance of incompatible offices; civil liberties; patents, copyrights, and trademarks; patent office; immigration and naturalization; apportionment of Representatives; measures relating to claims against the United States and interstate compacts generally.

On the other hand, the Committee on Foreign Relations has jurisdiction over relations of the United States with foreign nations generally; treaties; establishment of boundary lines between the United States and foreign nations; protection of American citizens abroad and expatriation; neutrality; international conferences and congresses; the American Red Cross; interventions abroad and declarations of war—I repeat, interventions abroad and declarations of war—measures relating to the diplomatic service; acquisition of land and buildings for embassies and legations abroad; measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad; United Nations Organization and international financial and monetary organizations; foreign loans.

Furthermore, a review of the actual legislation involving war powers which has been referred to the Foreign Relations Committee and the Judiciary Committee sustains the argument that the pending legislation comes under the jurisdiction of the Foreign Relations Committee.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a list of legislation related to war powers which has been submitted to the Foreign Relations Committee and to the Judiciary Committee.

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

LEGISLATION RELATING TO WAR POWERS REFERRED TO THE SENATE FOREIGN RELATIONS COMMITTEE

1. All Declarations of War.

2. All Area Resolutions:

Cuba PL87–733 (also Fulbright-Church Resolution, S.J. Res. 146, to terminate the Cuba Resolution).

Formosa PL84–4 (also Church-Mathias Resolution to terminate the Formosa Resolution, S.J. Res. 48).

Middle East PL85–7.

Berlin H. Con. Res. 570, 87th Congress.

Tonkin Gulf PL88–408 (also repeal of Tonkin Gulf, S. Con. Res. 40, 91st Congress).

3. All multilateral Alliances: NATO, SEATO, ANZUS.

4. All Bilateral Mutual Defense Treaties: China (Taiwan), Japan, Korea, Philippines.

5. All International Organizations: United Nations, Organization of American States.

6. Mathias Resolution, S. Con. Res. 27 to establish a commission to study termination of the State of National Emergency declared by President Truman during Korean War.

7. Case Legislation of Referring Executive Agreements to the Senate:

S. 596, passed Senate 81–0, February 16, 1972.

S. 3447, pending for hearings, Senate Foreign Relations Committee.

8. The National Commitments Resolution, S. Res. 85: passed the Senate June 25, 1969, 70–16.

9. All War Powers Legislation:

S. 3964—Javits—91st Congress.

S. 731—Javits—92nd Congress.

S. 2956—Javits, Stennis, Eagleton—92nd Congress.

S.J. Res. 95—Stennis—92nd Congress.

S. 1880—Bensten—92nd Congress.

S.J. Res. 59—Eagleton—92nd Congress.

S.J. Res. 18—Taft—92nd Congress.

LEGISLATION RELATING TO WAR POWERS REFERRED TO THE SENATE JUDICIARY COMMITTEE

(But only on the basis that they were submitted as proposed amendments to the Constitution)

1. The Ludlow Resolution, S.J. Res. 84, 76th Congress (1935, reintroduced 1937, hearings printed May, 1939). The legislation called for a national referendum before going to war.

2. The Bricker Amendment, 1950's, that no treaty or executive agreement would be in effect or self-executing unless passed by the Senate.

Mr. SPONG. One who studies this information that I am placing in the RECORD will see that only two measures have been referred to the Judiciary Committee, the Ludlow resolution of 1935, and the Bricker amendment of the 1950's. Both of these were, of course, constitutional amendments, and were introduced as constitutional amendments.

Certainly, this bill relates to the Constitution, but it does not amend the Constitution and most legislation coming before this body relates to the Constitution. We who are sponsoring the bill are aware of the constitutional aspects. We have had both legal scholars and lawyers testify on the bill. We are aware of the historical aspects of the bill. We have had professors of history testify. We are aware of the practical aspects. We have had former officials from Government testify.

Additionally, I think it is important to note that about 75 percent of the sponsors of this legislation are themselves lawyers. I find it somewhat incredible that anyone would suggest that that number of lawyers, with differing political philosophies and from various parts of our Nation, would support a bill which was unconstitutional or would seek to amend the Constitution through legislation, when they know fully well that such a move is impossible.

Mr. President, I yield such time as he may need to the Senator from New York.

Mr. JAVITS. Mr. President, in commenting upon the very splendid speech of the Senator from Mississippi and now of the Senator from Virginia as well, one idea has broken through to me which I would greatly appreciate their attention upon, as it may explain something which has puzzled me.

The members of the Judiciary Committee who are moving to refer the bill know as well as we do that we have all jurisdiction respecting foreign interventions and the declaration of war. They know as well as we do that they have the jurisdiction over constitutional amendments. Unless it were simply a matter of killing the bill, which Senator HRUSKA has said is not his motive, there must have been some reason we have not perceived. I begin to perceive it now, and I should like to submit it to my colleagues.

The reason is that they believe that what we are doing is amending the Constitution. They do not believe what we believe—that we are simply implementing by law, under the "necessary and proper" clause, what is meant by the constitutional processes in treaties and in executive agreements; not what is meant, in our view, by the words given in the Constitution—to wit, the Congress shall "declare war" and the President is "Commander in Chief." Nor do they subscribe to our proposition that at a given point, when the President has to "repel a sudden attack," at a point that action becomes "war" and requires the action of Congress.

Our colleagues believe, therefore, that we are seeking to make a fundamental change in the Constitution, that this is tantamount to a constitutional amendment. That is the issue. That is the issue the Senate is going to decide. Surely, this is not a procedural motion. This is a substantive motion. So the Senate is going to decide on this motion a substantive question. Is the War Powers Act, in effect, a constitutional amendment?

I was put in mind of it by the excellent analysis made by Senator STENNIS. The substantive proposition will be that they think this is a change in the Constitution. If the Senate decides that it is not a change in the Constitution, there is no reason for reference. This is the substantive question, and I hope very much that we will make the Senate aware of that, because it is a very critical point.

Another thing interests me greatly. My office came into possession of what were the State Department's "talking points" against this bill. One part of it is so interesting that I think it deserves to go into the RECORD today, so that Senators may have a chance to read about it and think about it.

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

Mr. JAVITS. I yield.

Mr. SPONG. I do not want to interrupt the Senator from New York, but he did solicit some comment and I want to agree with him.

I think that the debate on this motion has now narrowed to one between those who believe that the proposed legislation represents an amendment to the Constitution of the United States and those—the proponents and others who are supportive—who recognize that what this bill represents is merely the delineation of a methodology whereby coordination and consultation can be assured, consistent with what the Founding Fathers intended when they wrote the Constitution.

We, who support this bill do not believe that we are amending the Constitution in any way. On every day that this debate has taken place, the principal advocates of the proposed legislation have said over and over that we cannot do that. We have no desire at all to diminish the Commander in Chief powers which are given to the President of the United States under the Constitution. In fact, section 3 of the bill recognizes and reaffirms those powers.

At the same time, we are not trying to increase the powers which Congress has. What we are seeking to do, as has been pointed out time and time again, is to put into effect a procedure which will permit the President and the Congress to exercise the war powers granted to each by the Constitution.

I think, however, that the Senator from New York has very rightly put his finger on the question which the pending motion has come to pose: Would this legislation amend the Constitution of the United States or would it simply delineate means of carrying out powers already granted under the Constitution? I quite agree with him and with the remarks of the Senator from Mississippi that the war powers bill would not amend the Constitution and does not seek to amend it.

I thank the Senator from New York.

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

Mr. JAVITS. I yield.

Mr. STENNIS. Mr. President, I heartily agree with the Senator from Virginia. I think the Senator from New York has raised the point in a proper way and has stated it clearly. I agree wholeheartedly. The vote on this matter does give substance, as he has said. We tried to draw it as outlined by the Senator from Virginia and by the Senator from New York. We have done that.

I thank the Senator, and I commend him for the fine point he has made.

Mr. JAVITS. I thank the Senator.

I hope that even more than the mere res gestae, as we say in the law, when we are actually going to decide this matter tomorrow, this point may be brought home to as many Senators as possible.

Mr. President, I will speak again later. Senator EAGLETON, and perhaps others, will speak in the meantime.

Mr. ALLOTT. Mr. President, having read the testimony on the war powers bill, S. 2956, and listened to the arguments of my colleagues here on the floor, I am increasingly convinced of the complexity of the proposed legislation and of the many implications of the measure in its present form. The bill addresses one of the basic areas of the Constitution, the relationship between the President and the Congress. It is not only a question of their relative powers, as defined by the Constitution and as developed over the years in the political interplay between the executive and legislative branches of Government, but it specifically focuses on the area of war powers one of the most important of all the powers, which the American people entrust to their Government.

From the very beginning of the Republic, the question of how to assign and divide the war powers of the Nation has been the subject of great and continuing debate. As the sponsors of the proposed war power bill have pointed out, it received long and careful attention during the Constitutional Convention and in the ensuing debates over ratification of the Constitution. And in the nearly two centuries that have followed those dramatic beginnings, the argument between executive and legislature, in the political arena, and in the courts, in the Halls of Congress and in the public press, has continued nearly unabated.

When the danger of war has been slight, the debate has waned. But always it has been present in the consciousness of the Nation. In the 20th century, especially in the most recent decades, as the United States adjusted to its role as the leading world power, the question has once again drawn our attention. The introduction of the proposed war powers bill is another episode in this long debate and believe me, Mr. President, it is certainly not yet the end.

There are numerous differences of opinion about what the Constitution requires. The sponsors of the proposed legislation seem to think that their bill will help us understand the constitutional definitions. Many others, however, believe that the work of the Founding Fathers will not benefit from this legislative attempt at bringing a supposed "precision" which is alleged to be lacking in the work of the founders.

Whichever interpretation one agrees with, it is clear that a basic constitutional question is at issue. Before even discussing the proposed legislation, it may be well to take another look at this question and try to understand better just what the Constitution says about the war powers, and to determine just how far beyond that document we want to go here and now to define these powers.

Once we have completed these initial steps, we can then take a closer look at the proposed legislation with a greater understanding of what it is that we think it should accomplish.

Should the bill simply mirror the Constitution—in which case, do we need it at all? Should it attempt to define in practical terms the exact meaning of the Constitution? Or should it go beyond the Constitution, and attempt to spell out detailed limitations on the President's power, in excess of the restraints implied by the Constitution?

It seems to me that the proposed legislation deserves additional analysis. This analysis should take place in a committee where the main thrust would be an analysis of the Constitution and the relation of the bill to the Constitution and not, as it has mainly, I am sure, in the Foreign Relations Committee—but not exclusively—been to the problem of foreign relations of the Government of this country. The place to give it the required study, I think, is not on the floor of the

Senate, although I think the debate here during the past few days has been helpful.

I, therefore, urge that we do refer this measure to the Judiciary Committee for a specified period, where it can receive the careful examination it deserves on the basis of its constitutionality and its influence on the Constitution, rather than on foreign policy decisions which, I fear, the present bill is mainly based upon.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER (Mr. BROCK). Without objection, it is so ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOMINICK. 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. DOMINICK. Mr. President, I yield such time to the Senator from Alabama as he may desire.

Mr. ALLEN. I thank the distinguished Senator from Colorado for yielding time to me so that I might discuss this most important question now pending before the Senate.

Mr. President, on April 6 in the New York Times there appeared an excellent article by Eugene V. Rostow, professor of law at Yale University, entitled "Who's Got the Power?" This article deals directly with the Javits' amendment which is under consideration by the Senate. I wish to read from the article:

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.

Korea and Vietnam did not come about because the Presidency arrogated 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 crisis, 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, I ask unanimous consent to have the entire article printed in the RECORD.

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

WHO'S GOT THE POWER?

(By Eugene V. Rostow)

NEW HAVEN, CONN.—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 pattern 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 know 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 arrogated 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 crisis, 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. ALLEN. Mr. President, I support the motion by the distinguished Senator from Nebraska (Mr. HRUSKA) to commit this bill to the Committee on the Judiciary for further study. Already sponsors of the bill themselves have proposed three amendments to the bill, indicating it must not have been letter perfect at the time it was filed in the Senate. A matter involving such a great and important constitutional question as the power of the President to use the Armed Forces of the United States in the absence of a declaration of war is so important, it is so complex that it deserves all of the study that can be given to it. What committee better than the Committee on the Judiciary of the Senate should study constitutional questions? This bill should go to the Committee on the Judiciary.

Mr. President, if the bill does go to the Committee on the Judiciary I hope that the committee will give serious consider-

ation to substituting the provisions of House Joint Resolution 1 for the provisions of S. 2956. This bill is on the same general subject, but it does not usurp the powers of the President, and it does not seek to specify the particular instances in which the President can act and then proceed to limit the President to a 30-day period for acting in those areas.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the provisions of House Joint Resolution 1.

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

H.J. RES. 1

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress reaffirms its powers under the Constitution to declare war. The Congress recognizes that the President in certain extraordinary and emergency circumstances has the authority to defend the United States and its citizens without specific prior authorization by the Congress.

SEC. 2. It is the sense of Congress that the President should seek appropriate consultation with the Congress before involving the Armed Forces of the United States in armed conflict, and should continue such consultation periodically during such armed conflict.

SEC. 3. In any case in which the President without specific prior authorization by the Congress—

(1) commits United States military forces to armed conflict;

(2) commits military forces equipped for combat to the territory, airspace, or waters of a foreign nation, except for deployments which relate solely to supply, repair, or training of United States forces, or for humanitarian or other peaceful purposes; or

(3) substantially enlarges military forces already located in a foreign nation;

the President shall submit promptly to the Speaker of the House of Representatives and to the President of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating his action;

(B) the constitutional, legislative, and treaty provisions under the authority of which he took such action, together with his reasons for not seeking specific prior congressional authorization;

(C) the estimated scope of activities; and

(D) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

SEC. 4. Nothing in this joint resolution is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties.

Mr. ALLEN. Mr. President, if the bill does not go to the Committee on the Judiciary then I hope that the Senate itself here on the floor will substitute the provisions of House Joint Resolution 1.

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

Mr. ALLEN. I yield.

Mr. DOMINICK. Mr. President, I wish to say to the Senator that with a few minor variations I have today introduced for printing the so-called Zablocki sense of Congress resolution in connection with this particuar issue. Most certainly, if we ever get to that point, I shall solicit his support and the support of any other Senators I can for the favorable consideration of that amendment.

Mr. ALLEN. I thank the distinguished Senator from Colorado for giving me that information. As the Senator knows, I have on more than one occasion supported efforts by the distinguished Senator from Colorado to make more meaningful, more exact, more relevant, some of the legislation pending before the U.S. Senate; and I shall study with great interest the amendment that has been presented by the distinguished Senator from Colorado.

Mr. President, I do believe that the provisions of House Joint Resolution No. 1 or the provisions of the amendment of the distinguished Senator from Colorado, if agreed to here in the U.S. Senate, would remove many of my objections to the pending legislation.

Mr. Rostow has portrayed only one side of this issue, but has spelled out cogently and concisely some of the hazards involved in rushing to judgment on a question of such fundamental importance to our political system, and to our national security.

We must look at this critical topic from three perspectives—the executive-legislative relationship, the constitutional question, and the national security. Over the years there have been many disagreements between the executive and legislative branches over the conduct of our foreign relations, and the question of war or peace. Each branch has won and lost its share of battles. I am not convinced that we in the legislative branch have in recent years utilized as effectively as possible the powers explicitly provided to us by the Constitution.

The climate of opinion fostered by a growing weariness of war has led some to criticize the Executive for usurping the powers of the legislative branch. To cite the Vietnam conflict as a concrete example, one can argue that the Tonkin Gulf resolution and acceptance of the Executive's funding requests demonstrate legislative acceptance of, and acquiescence in, the policy followed in Southeast Asia. I do not wish to obscure the basic issue by focusing on specific and controversial events of the past. The question before us is this—the proposed legislation would dictate a profound change in the relationship between the two branches, one that I am not convinced is necessary, and one which raises serious constitutional questions.

One of our most important national assets, one which has enabled those chosen by the American people over two centuries to meet the challenges imposed by changes in domestic values and perspectives and in the international power structure, is the flexibility of the Constitution.

The legislation under consideration would attempt, by statute, to say what the Constitution provides. That is patently an abuse of our legislative authority. By that I mean, Mr. President, it goes beyond what we are empowered to do under the Constitution, because we have no power under the Constitution to state by statute what the Constitution means.

The Constitution means what it says, or, as what our late great Chief Justice Charles Evans Hughes said, the Constitution means what the judges say it means. While the late great Chief Justice tried to explain away that statement later, I believe that he was exactly right in making that statement—not that it is correct for the Constitution to mean what the judges say it means, but, from a practical standpoint, the Constitution means what the judges—and by judges I mean the Supreme Court of the United States—say it means, because how can we appeal from the Supreme Court? They are the final arbiters of what they say the Constitution means.

So how can we, by statute, codify—and I understand that is what the proponents of the legislation are seeking to do—areas in which the President can act under the Constitution? It just cannot be done in the absence of a constitutional amendment.

So the Constitution, irrespective of what the Congress says it means, means what it says, and, in the final analysis, means what the courts say it means.

The Founding Fathers, in their wisdom, foresaw that the system of checks and balances which they established would prevent the domination of the system by any one branch.

Yet this ingenious system was not to depend for its operation on a complex enumeration of specific details.

Mr. President, this legislation would depart from the wisdom of the Constitution, which is general, which is flexible, and would seek to enumerate a number of specific instances, specific areas, in which the President can act, and then limit his power to act in those areas to 30 days.

Mr. President, to the junior Senator from Alabama this seems to be something we patently could not do. And even if we could do that, a specific enumeration of the areas in which the President could act of necessity would leave out many areas in which it would be desirable for the President to act and in which he would have no authority to act under the terms of this legislation.

We all know from our own experience that if we try to limit ourselves to an enumeration of what we want to do or what is desirable to do in our everyday efforts, we would leave out something that is desirable. So by seeking to enumerate areas in which the President can act, we lose the benefit of the use of broad, general areas of power in which the President woud be empowered to act.

Yet this ingenious system was not to depend for its operation on a complex enumeration of specific details, but on broadly defined powers and responsibilities which would maximize the ability of the Government as a whole to respond to unforeseen and unforeseeable future developments, and maximize the interchange and, yes, the friction, between the three branches. I would like to see a more careful and considered evaluation by those who are best qualified to help in exposing its full implications—the leading practitioners and scholars of our legal system and its application throughout our history.

Last, but not least, the proposed leg-

islation raises serious questions, which have not been answered to my satisfaction, on the effect it might have on our ability to respond to threats to our national security. This is not a question of whether or not the United States will attempt to be the world's policeman.

Mr. President, I believe that the force of public opinion is going to prevent any President, present or future, from involving this country in another Vietnam—from gradually allowing our country to become involved in a no-win war such as we are involved in in Vietnam.

So what is the hurry about this bill, Mr. President? It is not contended, I assume, that it would end the war in Vietnam 1 day sooner. If it were, that would be more reason for pushing the bill through without its going to the Judiciary Committee, if possible. But it is not even contended, Mr. President, that this proposed statute would stop the war in Vietnam, or bring it to a close 1 single day earlier than it is going to end without the legislation. So what is the big rush? Why not let the bill go to the Judiciary Committee?

I feel that it would meet pretty general acceptance if a method could be hit upon under the Constitution that would accomplish the purposes sought to be accomplished by this legislation. But there is no danger of our getting involved in another Vietnam, and this bill will not end the war any quicker, so why rush it through? Why not let it go to the Judiciary Committee, as the motion before the Senate would provide?

In this nuclear age we must exercise the utmost care in placing restrictions upon the Commander in Chief of our Armed Forces. I realize that some of my honorable colleagues may argue that, indeed, it is because of the fact we are in a nuclear age that restrictions should be imposed. But, Mr. President, in this nuclear age, with a 30-day period within which the President can act in certain specified instances, is there not a danger that the President might overact or overreact, if he knew that his power would last for only 30 days? Would he not want to get the job accomplished in that 30-day period and not risk calling on Congress for its approval?

It occurs to the junior Senator from Alabama, Mr. President, that there are dangers inherent in this bill, and that it would in fact create more dangers than it would offer solutions to the problems and the doubts and fears that might beset us.

Then, too, Mr. President, this thought occurs to me: If we specify, as we would under this legislation, that the President can act for a period of 30 days in this instance, in that instance, and in another instance, would not our potential enemies—and we have them, Mr. President, as we well know—study the legislation just as carefully as would those of us in Congress who enact the legislation, to see just how far they could go in prodding here and prodding there, in taunting us here and taunting us there, in invading here and invading there, to go just as far as they could without running the risk of having the President use the retaliatory powers that he has at present?

Might they not see that they could move in this direction or that direction, and find the President powerless to act against them?

Mr. President, it occurs to me that this legislation is indeed dearly priced. It accomplishes little of a constructive nature, if anything. It places dubious limits on the President—that is, limits of dubious constitutional merit or worth. But it does lay our country open to having a President incapable of acting speedily in an emergency situation.

I submit only that we must take every precaution to avoid superficial treatment of a measure of such importance—and I cannot agree that we have done so to date. We must avoid an emotional response to such a fundamental issue.

For these reasons, Mr. President, and for the reason that there is no hurry, there is no occasion for haste, for the reason that even if the aims are constructive—and I certainly do not intend to suggest that the aims sought to be achieved are not constructive—and even if it possible to codify the power of the President to act as Commander in Chief of the Armed Forces of this country, in the face of his constitutional powers, I say that we ought to come up with the best possible bill, a bill that would not be subject to constitutional objections, a bill that would have serious and thoughtful study by the eminent members of the Committee on the Judiciary, who would be empowered to study it, hold hearings on the subject, and call in the best legal minds of the country to advise the committee.

I urge for all these reasons that the Judiciary Committee be given the opportunity to review S. 2956 carefully and thoroughly in the light of testimony by legal authorities before we are asked to make a judgment on this bill.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter to the editor of the Washington Star on this subject, written by Walter Sterling Surrey, and published on Sunday, April 9, 1972.

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

WAR POWERS BILL

SIR.—As one who for many years has practiced and taught in the field of international law, I can only view the Javits War Powers Bill as raising most serious constitutional law issues and as substituting for presidential flexibility in the conduct of our foreign policy an inflexible limitation on the president's power and capacities to act as the principal spokesman for the United States in the field of foreign relations and as the commander-in-chief of the armed forces of the United States.

One can identify, as a citizen, with the frustrations of many congressmen and senators on the position in which we find ourselves in Vietnam; one can, as a citizen, identify with the frustrations of a congressman or senator who today seeks assurances of better, more complete and prompter communications on significant foreign policy matters by the executive to the responsible committees of Congress; one can share with the congressmen and senators—and a large section of the American public—the concern with the changes in the fabric of our society which Vietnam has caused, and abhor the unknowns that could be brought about in our society and on our form of government by another Vietnam.

However, these frustrations and deep concerns cannot serve as justifications by Congress to seek through legislation, rather than by constitutional amendment, a drastic rearrangement of the constitutional relationships in the conduct of foreign policy between the Congress and the president, arrangements which will seriously affect our capabilities and flexibilities in our conduct of international relations.

Others have documented the specifics that may be made against the bill—its annulment of the Middle East Resolution and of our commitments to NATO, its limitations on the powers of the president as commander in chief, which were used so effectively by President Eisenhower in the Lebanese intervention, by President Kennedy in the Cuban missile crisis, by constant presidential actions with respect to Berlin, by President Johnson in the use of the fleet to deter Soviet intervention in the six-day war in 1967, by President Nixon's comparable action in the same Middle East area for the same purpose—to identify only a sampling.

However, at this stage of the legislative history of the Javits bill, it is important that the Congress focus on its course of conduct in order that it may provide full consideration to the terms and consequences of the proposed legislation. The Senate is scheduled to act on the legislation this week.

One can only hope that the leadership of both parties will recognize the full consequences of what the legislation seeks to do and at the very least will want to assure the fullest consideration in both houses of the constitutional implications of the legislation. This could be accomplished in part by the Senate referring the bill to the Senate Judiciary Committee with a 60-day time limit to examine and report to the full Senate the committee's views on the constitutional questions raised by the bill.

In addition, it is important that the House recognize that the Javits bill is very different from the Zablocki bill passed in August 1970. The Zablocki bill provided that wherever feasible the President should seek appropriate consideration by the Congress before involving the United States in armed conflict, and it required the president, in the event of his use of armed forces, to report to the Congress fully on such use.

It is important that the House recognize the grave differences between the two bills and that whether on the floor of the House, in considering the Javits bill, or in a House-Senate conference committee, in the event the Javits bill is handled as an amendment to the Zablocki bill, that these differences be given serious consideration by the House members or the House conferees. It is not enough to say, as has been stated on the Senate floor, that we are dealing with a political and not a legal issue. We are dealing in effect with an amendment to the Constitution and with a radical change in the historical relationship between the President and Congress in relation to foreign policy which will have widespread effects on the whole pattern of the conduct of our international relations.

WALTER STERLING SURREY.

Mr. ALLEN. Mr. President, I yield the floor.

Mr. DOMINICK. Mr. President, I rise to compliment my friend from Alabama for what I think is an extremely thoughtful speech, and to make some additional comments of my own.

As can be seen by the rather limited number of Senators in the Chamber, this debate, as important as it is, has

not really gripped the imagination of the Senate, nor has it yet gripped the imagination of the American people. Both these circumstances, I think, are regrettable. I say this because I feel that the debate on this bill may be as important for the future history of this country—and perhaps for the free world—as any that we have had since I have been in the Senate, since 1962.

Mr. President, we have here an interesting bill, in that it says, in section 2:

This Act is not intended to encroach upon the recognized powers of the President, as Commander in Chief and Chief Executive, to conduct hostilities authorized by the Congress, to respond to attacks or the imminent threat of attacks upon the United States, including its territories and possessions, to repel attacks or forestall the imminent threat of attacks against the Armed Forces of the United States, and, under proper circumstances, to rescue endangered citizens and nationals of the United States located in foreign countries.

Note that it specifically says that the act "is not intended to encroach upon the recognized powers of the President, as Commander in Chief." That is a very nice statement. But then we come over to section 5, which says that these hostilities cannot be conducted for more than 30 days unless Congress approves it and that Congress can cut it off in less than 30 days, under section 6, by the simple passage of an act or a joint resolution.

I cannot think of any more direct way of encroaching upon the powers of a President who has engaged troops under what we say are recognized powers in section 2. The two provisions simply do not go together, either constitutionally or legally. You cannot, on the one hand, pass an act which recognizes certain powers as belonging to the President and then, in another provision of the same act, say, "But Congress is not going to give him those powers." It is really a pretty extraordinary piece of legislation from that point of view—and from many others besides.

Mr. President, reference has been made to Prof. Eugene Rostow of Yale University. Professor Rostow happens to be a longtime friend of mine, a person with whom I have been in touch on several occasions, a person who acted as dean of Yale Law School for a number of years, a man who served in high positions during the 1960's in the State Department, and who is now back at Yale University as a professor of law.

I have been in touch with him directly and by mail, and he has submitted to me the text of an article on the so-called war powers bill which he has sent to a law journal. The article, in the form I received it, is 75 pages long, with appropriate footnotes encompassing an additional 13 pages. I am not going to ask that the entire article be printed in the RECORD, although I think it would be helpful if at a later date we could secure reprints of his printed article and supply a copy to each Member of the Senate; but I think it is worthwhile to read a few excerpts from the article, since we are dealing now with the question of whether or not this bill should be sent to the Judiciary Committee, a proposition which I firmly support. As a matter of fact, I would not object in the slightest if it got to the Committee on Armed Services, and we could get some input from our own committee—on which I serve—as to what the effect of this might be with respect to our mutual defense alliances throughout the world.

At the moment, since we are dealing only with the question of submitting it to the Judiciary Committee on an agreed time limit when it would be reported, I will try today to stick to some of the constitutional arguments which I think are important. Professor Rostow says:

The Javits Bill rests on a premise of constitutional law and constitutional history which is in error, and that its passage would be a constitutional disaster, depriving the government of the powers it needs most to safeguard the nation in a dangerous and unstable world. Even if a President were to ignore such a statute, assuming that it passed over his veto, on the ground that it is unconstitutional, the passage of the Bill would create uncertainties, and envenom politics, in ways which would themselves be dangerous, both at home and abroad. It would tend to convert every crisis of foreign policy into a crisis of will, of pride, and of precedence between Congress and the President, making the policy process even more athletic than it is today.

The Javits Bill is a more serious attack on the Constitution, and the security of the nation, than one or another of the Bricker Amendments which were nearly recommended by the Congress in the middle fifties. Those Amendments dealt only with the legal effect of treaties as internal law. They would have required affirmative action by Congress before treaties became operative as the supreme law of the land.

The Javits Bill is more ambitious.

I find it somewhat ironic that the proponents of this bill were the opponents of the Bricker amendment. They were called liberals then, and they are called liberals now. That is an ideological distinction which I find very difficult to follow.

This is a serious situation, it seems to me, when we have some of the very distinguished minds in the Senate supporting this type of provision largely, as I understand it, because of a reaction against the Vietnam war—an overreaction, to say the very least.

I read another section from the article of Professor Rostow, on page 6. I brought up this point in passing the other day, and I say it again.

Under the Javits Bill, no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations. And, on those occasions when the Bill would authorize the President to move quickly, the reporting requirements could well of themselves blow every secret diplomatic brush into a major crisis.

The Javits Bill is full of paradox. While its nominal motivation is to assure the nation that a pacific Congress will staunchly keep future Presidents from engaging in limited wars like that in Vietnam, the Bill would not have prevented the campaign in Vietnam if it had been enacted thirty years ago. Our participation in Vietnam was specifically authorized by President Eisenhower's SEATO Treaty, and by several pieces of legislation, including the Tonkin Gulf Resolution, enacted for the purpose of approving the use of armed force to uphold the commitment of that Treaty.

The point I am making here is that if the bill is designed to preserve the constitutional powers of the President to engage the Armed Forces of the United States in defense of our country, how then can we say by legislation that we are going to limit the Constitution by saying Congress could cut it off within 1, 2, or 3 days after the President has taken action?

It would seem to me that this would be particularly unconstitutional. This is over and beyond the question of whether the law is wise from a judgment point of view. Is it wise, for example, to take away from the President in consultation with the National Security Council, the State Department, and the Defense Department, the power to move, to move forces into obviously dangerous situations, the reason for moving them being to prevent a more major crisis from occurring, a crisis which could have broken out in 1967 and 1970 in the Mediterranean area relative to the Arab-Israel situation?

Professor Rostow, as I said, has written an extremely detailed, thoughtful, and carefully worded paper for printing. It is my wish that we all have had the opportunity to read this full article prior to this debate having come about. But some of the excerpts I have already read are of importance.

Here is another one which I think is important. We have had considerable discussion about Professor Bickel, also from Yale University, and his position on the ground that this is a good method of going.

Professor Rostow says:

The delegation theory of Professors Velvel, Wormuth and Bickel would deny the President and the Congress the most ordinary and elementary tools for protecting the nation in a time of international turbulence. Under their rule, we should be the only nation on earth incapable of making a credible military treaty. For their rule would make it impossible firmly to delineate American interests in advance, and thus to deter and contain processes of expansion which Congress and the President deem threatening to national security. It would emasculate both Congress and the Presidency, and deprive even treaties like NATO of their weight and credibility.

While the Javits Bill does not fully embrace this extraordinary doctrine about the non-delegability of Congress' power with respect to the use of armed forces, it would annul the military provisions of all existing treaties and probably those of outstanding congressional commitments as well, and completely annul all presidential commitments not embodied in treaties. There would be a difficult and dangerous period of hiatus, maximizing uncertainty, until new legislation could be considered and passed.

Mr. TAFT. Mr. President, will the Senator from Colorado yield at that point?

Mr. DOMINICK. I yield.

Mr. TAFT. I read that particular passage with some interest early today. I wondered whether the Senator could give some explanation as to Professor Rostow's meaning in that regard and the generally adopted theory that our treaties are not self-executing; indeed, that there must be some further action taken in order, under our constitutional processes, to authorize the use of our Armed Forces.

Mr. DOMINICK. Yes. I think he is talking not only about treaties but also about executive agreements which may not be in the form of a question, where we need additional action of one sort or another, referred to commonly as constitutional processes. I believe all our treaties do contain words "within constitutional processes" or "in accordance with constitutional processes." That includes NATO. But the fact is that in almost every one of the mutual defense treaties we have, we have provisions in them for joint action in case the territory or the forces of any of the nations involved are attacked by hostile forces.

It is assumed in all of these that almost immediately, by a message or by a request, or information simply from the President to Congress, that action can come practically simultaneously, without having to have specific authorization going through both Houses of Congress. I believe that this is what he is talking about.

Now, let me go on with this. I read it—as I am sure the Senator from Ohio has—rather carefully, and the next provision he makes is:

> The Constitution, Justice Goldberg once said, is not "a suicide pact." The war power, the Supreme Court has remarked, is the power to wage war successfully. So, too, the power of the President and of the Congress over foreign relations is the power to wage peace successfully. There is nothing in the history of the war power and the foreign relations power, since President Washington's first term, to suggest that the United States may not seek to avert the danger of war by giving potential enemies of the nation a credible and effective warning in advance. Those who oppose the presumptive constitutional validity of the means Congress and the President together select as appropriate to protect the security of the nation, *McCulloch* v. *Maryland* teaches, face a nearly insuperable burden of proof.

So I think what he is saying is that, once we attack the credibility of a mutual defense treaty, we discredit it and therefore we do not have any credible advance warning.

Mr. TAFT. I fail to see how that differs with the treaty status with regard to NATO, SEATO, and the other major defense treaties, so that it is clear, as the Senator has indicated, further action or authority does have to be given under those treaties in the use of our Armed Forces, even to the problem of attack upon one of the members, as provided for in the terms of the treaty itself. I am not reassured by the Senator's statement that he believes Professor Rostow is referring to Executive orders because——

Mr. DOMINICK. I said in part.

Mr. TAFT. Well, my question is whether Professor Rostow really was referring to Executive orders. But, if he was, it seems to me that the danger is clear and the need for this legislation is more clear than the case for existing treaties.

Mr. DOMINICK. Well, I can understand the Senator's concern. I have great respect for his judgment and backing and opinions. But let me say this, we have gone into this debate on what the constitutional processes are, and the question of the use of Armed Forces which, as the Senator well knows, has been debated for a considerable period of time both on this floor today and in the past. There are considerable degrees of pattern and practice that would indicate we do not need an act of Congress in order to have constitutional processes to back the action of the President.

Mr. TAFT. I would agree with that, that it is within the war powers or transcends the war powers. If that is the case, I have never understood, and the Senator seems to be advocating the theory that, somehow, the war-powers provision of the Constitution can be abrogated by a treaty, which would be news to me. If that is the case, and there is some general belief that there is, too; it would be important to go into the definition of what the war powers are and what the authorities are in general for the Department of the Armed Forces in hostilities, or in a situation in which hostilities are imminent, as this legislation does.

Mr. DOMINICK. This is another reason why I think the question the Senator has raised here in this colloquy should be sent to the Judiciary Committee, where the resolution can be far more thoroughly considered than it has been up to date.

I think it is apparent, from some of the points we have brought out before, that the sponsors have already amended it in three places to take care of some of the postulates we have posed to them. Under this situation, what we are talking about here is whether we are in fact not just trying to reexercise the powers given to us as Members of Congress under the Constitution, but also whether we are trying to curtail the powers which have, both by the Constitution and by practice—patterns of practice—over a long period of time been left in the hands of the President as Commander in Chief.

Mr. TAFT. I thank the Senator for his comments. I have not committed myself, I might say, as to my position to refer it to the committee. However, the Senator is certainly a distinguished member of the bar. The Senator from New York has been a distinguished member of the bar and has made legal interpretations. I think that is also true of many other members of the committee which has already had the legislation under consideration.

I think it is also pretty evident that we have taken a lot of time on the floor to consider the measure. So, anyone could get into the legal ramifications that might be covered in the matter, and all have had an opportunity to do so.

I would welcome hearing from the Senator as to what further information might come from a referral to the Committee on the Judiciary.

Mr. DOMINICK. Mr. President, I will attempt again to be as brief as I can be. I do not think the Senator from Ohio or the Senator from New York were present when I started. I pointed out that in section 2 of this bill, if it were passed, we would be specifically saying that we did not intend to encroach on the recognized powers of the President to conduct hostilities, to respond to attacks or the imminent threats of attacks. This is contained on page 7 of the bill. Yet, we go into sections 5 and 6 of the bill, and it is my understanding that we say there that although we do not intend to encroach upon his powers, we can cut him off after 1 day or he can be permitted to continue for 30 days, but no longer than that.

It seems to me that it is difficult to say that we are going to do this on the one hand and on the other hand say that we are going to cut off his right to do it. I do not understand that situation at all.

It seems to me that if the power contained in title II is designed to restrict the constitutional power, then by limiting it under sections 5 and 6, we are indeed doing as Professor Rostow said, trying to amend the Constitution by statute. I do not think that we should attempt to do that. And I do not think it is proper.

I could go on at some length. These are points that have been brought up before. However, I will repeat them.

As I understand it, there were only two professors of law who were witnesses in the hearing before the Foreign Relations Committee—one being Professor Bickel, who testified in favor of the bill, and the other being Professor Moore, of the University of Virginia, who testified against it.

There are obviously going to be differences among all lawyers as to what any particular bill means. However, when we are dealing with something which could have the potential significance to the history of this country as this bill does, if passed, it seems to me that we ought to get as many minds, and good minds, on the exact wording of it and the exact meaning of it, as we can. And we ought to do that prior to the time we take final action on the bill.

As I believe the Senator recognizes, the motion of the Senator from Nebraska to refer this matter to the Judiciary Committee will be for a limited period of time. So the bill will be reported again. It will not be stuffed in a cubbyhole where it may die. The purpose is to get the hearings finished and be able to come forward with some further evidence.

I strongly support the motion. I think it is well worthwhile doing. I certainly am—and I think many of the Members of the Senate also are—far from satisfied with the constitutionality of the bill or its workability in terms of the world as we see it today.

I ask unanimous consent that a letter to the editor of the Washington Star, written by Mr. Walter Sterling Surrey, a very prominent lawyer in town and a former member of the State Department, and published in yesterday's Star, be printed in the RECORD.

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

WAR POWERS BILL

SIR: As one who for many years has practiced and taught in the field of international law, I can only view the Javits War Powers bill as raising most serious constitutional law issues and as substituting for presidential flexibility in the conduct of

our foreign policy an inflexible limitation on the President's power and capacities to act as the principal spokesman for the United States in the field of foreign relations and as the commander-in-chief of the armed forces of the United States.

One can identify, as a citizen, with the frustrations of many congressmen and senators on the position in which we find ourselves in Vietnam; one can, as a citizen, identify with the frustrations of a congressman or senator who today seeks assurances of better, more complete and prompter communications on significant foreign policy matters by the executive to the responsible committees of Congress; one can share with the congressmen and senators—and a large section of the American public—the concerns with changes in the fabric of our society which Vietnam has caused, and abhor the unknowns that could be brought about in our society and on our form of government by another Vietnam.

However, these frustrations and deep concerns cannot serve as justifications by Congress to seek through legislation, rather than by constitutional amendment, a drastic rearrangement of the constitutional relationships in the conduct of foreign policy between the Congress and the president, arrangements which will seriously affect our capabilities and flexibilities in our conduct of international relations.

Others have documented the specifics that may be made against the bill—its annulment of the Middle East Resolution and of our commitments to NATO, its limitations on the powers of the president as commander-in-chief, which were used so effectively by President Eisenhower in the Lebanese intervention, by President Kennedy in the Cuban missile crisis, by constant presidential actions with respect to Berlin, by President Johnson in the use of the fleet to deter Soviet intervention in the six-day war in 1967, by President Nixon's comparable action in the same Middle East area for the same purpose—to identify only a sampling.

However, at this stage of the legislative history of the Javits bill, it is important that the Congress focus on its course of conduct in order that it may provide full consideration to the terms and consequences of the proposed legislation. The Senate is scheduled to act on the legislation this week.

One can only hope that the leadership of both parties will recognize the full consequences of what the legislation seeks to do and at the very least will want to assure the fullest consideration in both houses of the constitutional implications of the legislation. This could be accomplished in part by the Senate referring the bill to the Senate Judiciary Committee with a 60-day time limit to examine and report to the full Senate the committee's views on the constitutional questions raised by the bill.

In addition, it is important that the House recognize that the Javits bill is very different from the Zablocki bill passed in August 1970. The Zablocki bill provided that wherever feasible the President should seek appropriate consideration by the Congress before involving the United States in armed conflict, and it required the president, in the event of his use of armed forces, to report to the Congress fully on such use.

It is important that the House recognize the grave differences between the two bills and that whether on the floor of the House, in considering the Javits bill, or in the House-Senate conference committee, in the event the Javits bill is handled as an amendment to the Zablocki bill, that these differences be given serious consideration by the House members or the House conferees. It is not enough to say, as has been stated on the Senate floor, that we are dealing with a political and not a legal issue. We are dealing in effect with an amendment to the Constitution and with a radical change in the historical relationship between the president and Congress in relation to foreign policy which will have widespread effects on the whole pattern of the conduct of our international relations.

Mr. EAGLETON. Mr. President, I rise to speak in opposition to the Hruska motion to refer S. 2956 to the Committee on the Judiciary.

The remarks of the Senator from Colorado (Mr. DOMINICK) and the Senator from Alabama (Mr. ALLEN) placed considerable emphasis on the absence of noted legal scholars in support of the proposed Javits bill. The Senator from Colorado read excerpts from a law review article by Professor Rostow. However, the Senator from Colorado failed to mention two law review articles already in the RECORD written by retired professors of law. One is in the RECORD of Wednesday, March 29, by former Prof. WILLIAM SPONG, now a Senator from the State of Virginia. That is an article that was published in the University of Richmond Law Review. It was introduced into the RECORD by the Senator from Missouri.

On the following day, on the basis of reciprocity, the Senator from Virginia (Mr. SPONG) requested that an article by retired professor of law EAGLETON of the University of Michigan be printed in the RECORD. Both law review articles pertain to the War Powers Act.

So two ex-law professors have given their opinions as to the constitutionality of this legislation.

Mr. President, I have in my hand a brief entitled "Indochina: The Constitutional Crisis." This brief also relates to this matter. It has been prepared by several eminent legal scholars and practitioners of the law, including: Alexander M. Bickel, professor of law, Yale Law School; Bruce Bromley, attorney, New York City; former judge, New York Court of Appeals; Elias Clark, professor of law, Yale Law School; Ramsey Clark, former Attorney General; William T. Coleman, attorney, Philadelphia, Pa.; John W. Douglas, former Assistant Attorney General; George N. Lindsay, attorney, New York City; Burke Marshall, professor of law, Yale Law School; former Assistant Attorney General; Louis F. Oberdorfer, former Assistant Attorney General; Stephen J. Pollak, former Assistant Attorney General; Paul C. Warnke, former Assistant Secretary of Defense; and Edwin M. Zimmerman, former Assistant Attorney General.

Mr. President, I ask unanimous consent that the brief to which I have referred be printed at this point in the RECORD.

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

INDOCHINA: THE CONSTITUTIONAL CRISIS

The dispatch of American troops into Cambodia by the President, without specific authorization by Congress, raises serious questions about the constitutional allocation of power between the legislative and executive branches. The most significant factor in the resolution of such questions is the presence or absence of action by each branch.

The power to commit American forces to combat was originally entrusted to Congress, which retained it almost unchallenged for over a century. But in the twentieth century, Congress has passively allowed the effective ability to engage the United States in hostile actions abroad to be assumed almost entirely by the Presidency.

Proposals now before Congress invoke the money power as a means of asserting control over the Indochinese War. If Congress exercises its money power to prohibit specific uses of the armed forces, it will reassert its long dormant capacity firmly and constitutionally to limit the President's ability to use the armed forces for purposes which Congress does not approve.

I. THE LANGUAGE OF THE CONSTITUTION

The power to commit American troops to battle was allocated by the Constitution between the President and Congress. (The relevant clauses of the Constitution are quoted in the Appendix.) The President is entrusted with the executive power,[1] made Commander in Chief of the Army and Navy,[2] and, with the advice and consent of the Senate, empowered to make treaties and appoint ambassadors.[3] The Congress is empowered to lay taxes to provide for the common defense,[4] to define and punish offenses against the law of nations,[5] to declare war,[6] to raise and support armies (but not to finance them for more than two years at a time),[7] to provide and maintain a navy,[8] to make rules for the land and naval forces,[9] and to provide for calling up and organizing the militia.[10]

II. THE ORIGINAL UNDERSTANDING

The Constitution does not say explicitly whether the army may be sent into battle when Congress has not declared war, or, if it may, under what circumstances and by whose decision. In interpreting the Constitution on this point, it is helpful to look at the intent of the Framers and to the understanding of the men who first put the Constitution into practice.[11]

The Constitutional Convention debated the clause giving Congress the power to declare war on August 17, 1787.[12] The clause originally empowered Congress "to make war."[13] Some delegates objected that the power should lie with the executive, as it did in England.[14] Most of the Convention seemed firmly of the opinion that the power should lie with Congress, but that the President should have the power to defend against a sudden attack. The Convention decided to "insert 'declare,' striking out 'make' war, leaving to the executive the power to repel sudden attacks."[15] The Framers had in mind a division of functions. The President, as Commander in Chief, was charged with the conduct of hostilities after they are legally begun. He was also expected to take measures to repel any actual attack upon the United States, as an incident of his executive power. But the power to initiate hostilities was clearly meant to be reserved to the Congress, with the President participating in that initiative only so far as his signature was necessary to complete an act of Congress. Thus, the President, unless his veto is overridden, may prevent war, but he cannot constitutionally act alone to begin a war.

The Judicial branch was also quick to conclude that Congress alone can declare war. Delivering the opinion of the Supreme Court in an 1801 prize case, Chief Justice John Marshall concluded that the "whole powers of war" were "vested in Congress."[16]

There may, however, be hostilities which fall short of requiring an actual declaration of war. Ten years after the adoption of the Constitution, the naval trouble between the United States and France which had begun under Washington became so acute that American shipping was greatly endangered.[17] President Adams had to decide what to do. Alexander Hamilton advised the administration against action without Congressional authority:

In so delicate a case, in one which involves so important a consequence as that of war,

Footnotes at end of article.

my opinion is that no doubtful authority ought to be exercised by the President.[18]

Adams decided to wait for Congress to act, and it passed laws authorizing him to protect American commerce.[19] Similarly in 1801, President Jefferson was faced with hostilities on the Barbary Coast, but felt that he could order only defensive measures until Congress authorized him to commit forces to offensive action.[20]

In the first two limited wars in which the United States found itself, both Adams and Jefferson had the means to order retaliatory action immediately. Perhaps some lives and property would have been saved had they done so. But both clearly felt that the decision to commit American forces was not constitutionally theirs to make, and preferred the preservation of the Constitutional process to the pursuit of a temporary military advantage.

III. HISTORICAL DEVELOPMENT OF THE WAR POWER

A. Wars and Limited Wars in the Nineteenth Century:

If the President's power to engage American forces in hostilities on his own initiative is limited to defensive action by a strict construction of the Constitution, the question of the proper role of Congress arises. Congress clearly has the power to engage the United States in formal war, as it did in 1812 with the President reluctantly assenting.[21] It may declare war at the request of the President.[22] And Congress may also ratify after the fact hostilities begun by the President.[23]

The executive branch very early recognized the exclusive power of Congress to declare war. In the course of a dispute with Spain in 1805, President Jefferson told Congress:

Considering that Congress alone is constitutionally invested with the power of changing our position from peace to war, I have thought it my duty to await their authority before using force in any degree which could be avoided.[24]

Similar deference to the sole power of Congress to make any decision to commit the United States to war was voiced by President James Monroe,[25] Secretary of State John Quincy Adams,[26] and Secretary of State Daniel Webster.[27]

The Congress itself was jealously aware of its war power, and on one occasion nearly censured the President for invading it. In 1846 it had declared, after the fact, that a state or war existed with Mexico. But the debate was bitter and the war unpopular. At the end of the war, the House of Representatives voted its thanks to General Taylor, but amended its resolution to note that he had won

A war unnecessarily and unconstitutionally begun by the President of the United States.[28]

Among the Congressmen supporting the amendment were former President John Quincy Adams and future President Abraham Lincoln.

Congress also has considerable power, short of a declaration of war, to authorize and regulate limited hostilities, as it has done on a number of occasions, with and without executive approval, since 1798.[29]

During the nineteenth century, the executive branch frequently recognized the need for congressional authorization even for limited military actions. In 1857 the Secretary of State refused to send ships to help a British expedition in China, because he lacked congressional authority to do so.[30] The next year President Buchanan pleaded with Congress for authority to protect transit across the isthmus of Panama, but refused to act without it.[31] Nor in 1876 would the State Department use force to help Americans in Mexico, because it felt that it lacked the power to do so.[32] As late as 1911 President William Howard Taft felt that he had enough power to move troops to the Mexican border, to be ready in case Congress told him to protect American lives and property endangered by the revolution there, but refused to send them in on his own authority.[33]

B. Erosion of the Congressional War-Making Power in the Twentieth Century:

In the early part of the twentieth century, the executive began to exercise greater discretion in the use of American armed forces abroad. For instance, without specific congressional approval, President Theodore Roosevelt sent American troops into Panama in 1903 and President Wilson sent troops into Mexico in 1916 in pursuit of the Pancho Villa bandits.[34]

Since 1945, the executive has regularly used military force abroad as a tool of diplomacy. Aside from Indochina, the greatest use of American force was in Korea, where several hundred thousand troops were committed to combat and major casualties were incurred. There was neither a formal declaration of war, nor any other specific congressional sanction for the Korean conflict.[35] American forces were sent into the Formosan Strait in 1955, into Lebanon in 1958, and into the Dominican Republic in 1965. The Navy was used to blockade Cuba during the missile crisis in 1962. And, most recently, naval vessels were dispatched to the vicinity of Haiti and Trinidad in response to internal conflicts in those countries. Prior congressional resolutions were obtained by the President for the Formosan and Lebanese actions, but both the validity of those resolutions and the degree to which President Eisenhower relied on them has been questioned.[36]

The application of prior historical precedents to unilateral executive use of armed force abroad in the mid-twentieth century can, however, be misleading. For instance, as precedents for the Vietnam War, a State Department Memorandum cites a long series of military actions ordered by the President alone.[37] The majority of the cited military actions undertaken by the executive without congressional approval took place in the nineteenth century. Most of them were not actions that involved conflicts with foreign states; rather, the bulk of them involved the protections of individuals, police actions against pirates or actions against primitive peoples. Furthermore, the United States did not have a significant standing army during peacetime until after 1945, and the President was limited in the military actions that he could take by the need to approach Congress to ask for any increase in the size of the armed forces. Today, with a tremendous military machine and modern transport at his immediate disposal, the President is under little practical pressure to seek congressional authorization for his actions, and therefore he is unlikely to seek it unless Congress insist that he do so.[38]

IV. THE THEORETICAL BASES FOR UNILATERAL PRESIDENTIAL ACTION

The theories on which various Presidents have relied for the use of military force abroad without congressional approval may be divided into three general categories: (1) the sudden attack theory; (2) the neutrality theory; and (3) the collective security theory.[39]

(1) *The Sudden Attack Theory*—The President as the Chief Executive has the inherent power to defend the sovereignty and integrity of the nation itself and to respond to an armed attack on the territory of the United States without requesting congressional approval. For example, we do not question the constitutional authority of the President to order a retaliatory strike in the event of an atomic attack on the territory of the United States. In the absence of an armed attack on American territory, the power of the President is more closely circumscribed.[40]

(2) *The Neutrality Theory*—Also known as "interposition," the neutrality theory was developed during the nineteenth century as a justification for American military involvement abroad to protect American citizens and property. When American armed forces were sent into a foreign nation, their presence was supposed to be "neutral" with respect to any conflicts there. *The executive, in taking such action, was not necessarily "making war" but merely dispatching troops to act as security guards for American citizens and their property. The real difficulty, clearly, was in remaining neutral and avoiding conflict.*[41]

(3) *The Collective Security Theory*—Since 1945, the United States has entered into many security treaties with foreign nations. Many of these agreements have clauses which indicate that the security of each signatory is vital to the security of each other signatory. Unilateral presidential action under these agreements may be justified as necessary for the protection of American security even though the conflict may arise thousands of miles from American shores, but, *carried to its extreme, the collective security theory would justify almost any "unilateral" presidential use of armed force abroad,*[42] *a result contrary to Constitutional standards.*

V. THE JUSTIFICATIONS FOR UNILATERAL EXECUTIVE ACTION IN INDOCHINA

The involvement of the United States in Vietnam, the commencement of an air war in Laos, and the expansion of the ground war into Cambodia have resulted almost entirely from executive decisions and actions. The executive branch of the government has justified its action primarily on the grounds of: (1) the presidential prerogative to protect American security interests abroad by whatever means necessary; (2) the SEATO treaty; and (3) the Gulf of Tonkin Resolution.[43] It cannot be said that the recent actions by the executive in Cambodia or the earlier actions in both Vietnam and Laos are clearly contrary to the Constitution. However, the expansion of the war into Cambodia is the latest in a long series of acts which, taken together, have nearly stripped Congress of its war power.

(1) The Presidential Prerogative—Undoubtedly, the speed with which crises develop in the modern world necessitates a strong executive who can respond quickly to such crises. The need for a speedy response, the need for secrecy, the need to protect American citizens and property abroad, and the need to protect American security interests in the balance of power are all used to legitimize the use by the executive, without congressional approval, of American armed forces abroad. Recent United States actions, especially in Korea and Indochina, are cited to support great executive discretion in the use of American military force abroad. The recent invasion of Cambodia without prior congressional approval or even notice is not without historical precedent and not without justification under a broad interpretation of the collective security theory.[44]

However, the real question is whether the balance has shifted too far in favor of the executive.[45] A war, such as the one in Indochina, requires great sacrifices on the part of great numbers of the American people. It is difficult, if not impossible, to predict the ultimate outcome of any American intervention. Consequently, when there is a possibility of large scale American involvement and even a limited risk of war, Congress should pass on the desirability of American military action.[46]

The executive has also placed reliance on the power of the President as chief formulator of foreign policy and as Commander in Chief of the armed forces. Granted that the President does have primary responsibility in the modern world for the handling of foreign policy, he should not have the discretion to initiate war as an instrument of foreign policy.

Finally, the Commander in Chief pro-

Footnotes at end of article.

vision of the Constitution is an expression of civilian control over the military; it does not give the war power to the President.[47]

(2) The SEATO Treaty—The Southeast Asia Treaty Organization is one of the many multilateral collective security treaties which the United States has signed. Neither South Vietnam nor Cambodia is a signatory, but both countries are within "protocol areas" which the signatories consider to be vital to their security interests.[48] The terms of the treaty are ambiguous, and it is at least questionable whether the United States was obligated by the terms of the treaty to come to the aid of South Vietnam.[49]

THE CONSTITUTION OF THE UNITED STATES

(Clauses related to war)

Article I

Section 1. All legislative power herein granted shall be vested in a Congress of the United States . . .

Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to . . . provide for the common Defence . . .

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant letters of Marque and Reprisal, and make rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of money to that Use shall be for a longer term than Two years;

To provide and maintain a Navy;

To make rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia . . .

To provide for organizing, arming, and disciplining the Militia . . .

To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . .

Article II

Section 1. The executive Power shall be vested in a President of the United States of America . . .

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual service of the United States; . . . He shall have power, by and with the advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors . . . and all other Officers of the United States . . .

(The appropriations clause)

Article I

Section 9. No money shall be drawn from the Treasury, but in consequence of Appropriations made by law; . . .

THE DEBATE ON THE WAR POWER IN THE CONSTITUTIONAL CONVENTION

(From Madison's notes)

Friday August 17th in convention, "To make war":

Mr. PINKNEY opposed the vesting this power in the Legislature. Its proceedings were too slow. It would meet but once a year. The House of Representatives would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in the Senate, so as to give no advantage to large States, the power will notwithstanding be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one authority to make war, and another peace.

Mr. BUTLER. The objections against the Legislature lie in great degree against the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.

Mr. MADISON and Mr. GERRY moved to insert "declare," striking out "make" war; leaving to the Executive the power to repel sudden attacks.

Mr. SHARMAN thought it stood very well. The Executive should be able to repel and not to commence war. "Make" better than "declare" the latter narrowing the power too much.

Mr. GERRY never expected to hear in a republic a motion to empower the Executive alone to declare war.

Mr. ELLSWORTH. There is a material difference between the cases of making *war* and making *peace*. It should be more easy to get out of war than into it. War also is a simple and overt declaration, peace attended with intricate and secret negotiations.

Mr. MASON was against giving the power of war to the Executive, because not safety to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred "declare" to "make."

On the motion to insert *declare*—in place of *make*, it was agreed to.

N.H. No.

Mass. absent.

Conn. no (On the remark by Mr. King that "make" war might be understood to "conduct" it which was an Executive function, Mr. Ellsworth gave up his objection, and the vote of Connecticut was changed to—ay).

Pa. ay.

Del. ay.

Md. ay.

Va. ay.

N.C. ay.

S.C. ay.

Geo. ay.

Mr. Pinkney's motion to strike out the whole clause, disregard to without call of States.

COMMENTS ON THE ROLE OF CONGRESS AND THE PRESIDENT IN MILITARY AND FOREIGN AFFAIRS

JAMES MADISON. "The management of foreign relations appears to be the most susceptible of abuse of all the trusts committed to government, because they can be concealed or disclosed in such parts and at such times as will best suit particular views; and because the body of the people are less capable of judging, and are more under the influence of prejudices, on that branch of their affairs, than of any other. Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad. "Letter to Jefferson, May 13, 1798.

THOMAS JEFFERSON. "Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided." Message to Congress, December 6, 1805.

JOHN MARSHALL. "The whole powers of war being, by the Constitution, vested in Congress, the acts of that body alone can be resorted to as our guides in this inquiry." Opinion in *The Amelia*, 1801.

Justice SAMUEL P. CHASE. "Congress is empowered to declare a general war, or Congress may wage a limited war; limited in place, in object, in time. If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli*, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws. Opinion in *Bas v. Tingey* 1800.

DANIEL WEBSTER. "In the first place, I have to say that the war-making power in this Government rests entirely with Congress; and that the President can authorize belligerent operations only in the cases expressly provided for by the Constitution and the laws. By these no power is given to the Executive to oppose an attack by one independent nation on the possessions of another. We are bound to regard both France and Hawaii as independent states, and equally independent, and though the general policy of the Government might lead it to take part with either in a controversy with the other, still, if this interference be an act of hostile force, it is not within the constitutional power of the President; and still less is it within the power of any subordinated agent of government, civil or military." Statement while Secretary of State 1851.

JAMES BUCHANAN. "The executive government of this country in its intercourse with foreign nations is limited to the employment of diplomacy alone. When this fails it can proceed no further. It cannot legitimately resort to force without the direct authority of Congress, except in resisting and repelling hostile attacks. It would have no authority to enter the territories of Nicaragua even to prevent the destruction of the transit and to protect the lives and property of our own citizens on their passage. It is true that on a sudden emergency of this character the President would direct any armed force in the vicinity to march to their relief, but in doing this he would act upon his own responsibility." Message to Congress December 6, 1858.

ABRAHAM LINCOLN. "Let me first state what I understand to be your position. It is that if it shall become necessary to repel invasion, the President may, without violation of the Constitution, cross the line and invade the territory of another country, and that whether such necessity exists in any given case the President is the sole judge. . . .

"Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such a purpose, and you allow him to make war at his pleasure. Study to see if you can fix any limit to his power in this respect, after having given him so much power as you propose. . . .

"The provision of the Constitution giving the war-making power to Congress was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no one man should hold the power of bringing oppression upon us. But your view destroys the whole matter, and places our President where kings have always stood." Letter to Herndon while in Congress.

FOOTNOTES

[1] Constitution of the United States of America, Article 2, §1.

[2] *Ibid.* Article 2, §2, cl. 1

[3] *Ibid.* Article 2, §2, cl. 2

[4] *Ibid.* Article 1, §8, cl. 1

[5] *Ibid.* Article 1, §8, cl. 10

[6] *Ibid.* Article 1, §8, cl. 11

[7] *Ibid.* Article 1, §8, cl. 12

[8] *Ibid.* Article 8, §8, cl. 13

[9] *Ibid.* Article 1, §8, cl. 14

[10] *Ibid.* Article 1, §8, cl. 15 and cl. 16

[11] For an exhaustive analysis of the historical development of the war power see the article by Francis D. Wormuth, "The Vietnam War: The President versus the Constitution," on which this paper draws heavily. It is reprinted in Falk, ed., *The Vietnam War and International Law*, Princeton University Press, 1969.

[12] James Madison, *Notes of Debates in the Federal Convention*, Ohio University Press edition, 1966.

A transcript of Madison's notes on the debate on the war power is included in the appendix to this paper.

[13] *Ibid.*, debate of August 17, 1787 (Ohio Edition page 476).

[14] *Ibid.*, remarks of Mr. Butler (see appendix). For a discussion of the English allocation of power, still accurate when the Constitution was written, see John Locke, *Second Treatise on Government* (1960), chapters 12 and 13, §145.

Mr. Gerry remarked that he "never expected to hear in a republic a motion to empower the Executive alone to declare war."

[15] *Ibid.*, the motion passed eight states to one, Massachusetts absent. (see appendix).

[16] *The Amelia*, 1 Cranch (5 U.S.) 1 (1801). Chief Justice Marshall wrote: The whole powers of war being, by the Constitution, vested in Congress, the acts of that body alone can be resorted to as our guides in this inquiry.

The case involved a ship whose seizure would have been legal under the President's privateering proclamation, but whose seizure the Court held was illegal under the terms of the Act of Congress which authorized the proclamation. The privateer was made to pay damages to the ship's owner.

[17] After the outbreak of the war between France and England in 1792, American shipping was molested by the blockades of both nations. President Washington met the challenge with his famous Neutrality Proclamation, which kept the United States out of the conflict. By 1798, however, French depredations on American commerce had become so menacing that action was needed to protect it. The question was whether President Adams could do so on his own authority or whether he needed the authority of Congress.

[18] Alexander Hamilton to James McHenry, the Secretary of War, May 17, 1798 (quoted in Wormuth, *op. cit.*)

[19] Congress suspended commercial intercourse with France in the Act of June 13, 1798, augmented by the Act of February 9, 1799. (1 Stat. 565, 1 Stat. 613). It denounced the treaty with France in the Act of July 7, 1798 (1 Stat. 578). It created the Department of the Navy by the Act of April 27, 1798 (1 Stat. 553). And it established the Marine Corps by the Act of July 11, 1798 (1 Stat. 594). The controversy with France is described in note 17, above.

[20] The Barbary States, particularly Tripoli, had been marauding American shipping, in an attempt to exact a payment of tribute from the United States. When the promised tribute was not paid, Tripoli declared war on the United States. President Jefferson sent ships to the Mediterranean, but authorized them only to defend themselves and other American ships. The Navy captured a Tripolitan ship, but released it after disarming it, as the President told Congress:

"Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense also, they will place our force on an equal footing with that of its adversaries."

Thomas Jefferson, First Annual Message, December 8, 1801, *Messages and Papers of the Presidents* (1908) vol. I, p. 326.

[21] Act of June 18, 1812 (2 Stat. 155).

[22] Act of April 20, 1898 (30 Stat. 738), containing the ultimatum to Spain, and the Act of April 25, 1898 (30 Stat. 364), declaring that a state of war had existed since April 21.

[23] Act of May 13, 1846 (Stat.), and Act of August 6, 1861 (12 Stat. 326).

[24] *Messages and Papers of the Presidents*, vol. I, p. 389.

[25] In 1824 Colombia notified the United States that it was threatened by France, and asked for protection. The Monroe Doctrine had been announced the year before, but the administration would not commit itself to defend Colombia. President Monroe wrote to Former President Madison that:

"The Executive has no right to commit the nation in any question of war."

Letter of August 2, 1824, quoted in Wormuth *op. cit.*

[26] Three days after Monroe's letter to Madison, Secretary of State Adams formally wrote to the Minister of Colombia to the United States:

"By the Constitution of the United States, the ultimate decision of this question belongs to the Legislative Department of the Government."

John Quincy Adams to Jose Maria Salazar, August 6, 1824.

[27] In 1851 Hawaii asked the United States for protection from France. Secretary of State Daniel Webster refused to help:

"I have to say that the war-making power rests entirely with Congress and that the President can authorize belligerent operations only in the case expressly provided for by the Constitution and the laws. By these no power is given to the Executive to oppose an attack by one independent nation on the possessions of another."

J.B. Moore, *Digest of International Law*, Washington, G.P.O. vol. 7, p. 163.

[28] *Congressional Globe*, 30th Congress, 1st Session, page 95, January 3, 1848:

"The Mexican War had been precipitated in 1846 by President Polk's dispatch of American troops into a territory whose possession was disputed with Mexico. After hostilities erupted, Congress reluctantly declared that a state of war existed between the United States and Mexico."

The resolution referred to was a vote of thanks to General Zachary Taylor, the Commander of the successful American forces. The clause censuring the President was moved as an amendment to that resolution. The amendment was adopted on January 3, but was dropped when the resolution came up for a final vote.

[29] For the 1798 legislation, see note 19, above.

Congress authorized the President to act against Tripoli in the Act of February 6, 1802 (2 Stat. 129).

In 1839, in the course of a dispute over the boundary of Maine, Congress authorized the use of force against England in the Act of March 3, 1839 (5 Stat. 355). Force was never needed.

In 1890 the Congress passed an act, which became law without the President's signature, authorizing the use of force to extract an indemnity for the seizure of American ships off Venezuela. Act of June 17, 1890 (26 Stat. 674). The indemnity was secured by arbitration.

[30] Secretary of State Lewis Cass wrote the British Government that:

"Under the Constitution of the United States, the executive branch of this Government is not the war-making power. The exercise of that great attribute of sovereignty is vested in Congress, and the President has no authority to order aggressive hostilities to be undertaken . . . Military expeditions into the Chinese territory cannot be undertaken without the authority of the National Legislature."

Moore, *op. cit.* vol. 7, p. 164.

[31] President Buchanan told Congress that: "The executive government of this country in its intercourse with foreign nations is limited to diplomacy alone. When this fails it can go no further. It cannot legitimately resort to force without authority of Congress, except in resisting and repelling hostile attacks."

Messages and Papers of the Presidents, vol. 5, p. 616: Message of December 6, 1858.

[32] Acting Secretary of State Hunter wrote:

"The President is not authorized to order or approve an act of war in a country with which we are at peace, except in self-defense. This is a peculiarity of our form of government, which at times may be inconvenient, but which is believed to have proved and will in the future be found in the long run to be wise and essential to the public welfare."

Moore, *op. cit.* vol. 7, p. 167.

[33] In his Third Annual Message, President Taft told Congress:

"The assumption by the press that I contemplate intervention on Mexican Soil to protect American lives or property is of course gratuitous, because I seriously doubt whether I have such authority under any circumstances, and if I had I would not exercise it without express Congressional approval."

Despite presidential protestations to the contrary, a diluted but similar recognition of the need for Congressional approval of limited hostilities lay behind the requests for the Formosa Resolution of 1954, the Middle East Resolution of 1957, and the Gulf of Tonkin Resolution of 1964.

[34] See generally, Reveley, "Presidential War Making: Constitutional Prerogative or Usurpation?" 55 Va. L. Rev. 1243, 1257–63 (1969):

President Wilson sent American troops into Vera Cruz in 1914 on his own authority, but he had asked Congress for an enabling act the day before the troops were used, and the day after the landing Congress ratified his actions.

[35] See, "Congress, The President and the Power to Commit Forces to Combat," in *The Vietnam War and International Law*, v. 2 (Falk. ed. 1969), at 616, 636–37. This article originally appeared as a Note in the Harvard Law Review, 81 Harv. L. Rev. 1771 (1968). Much of the content and many of the arguments in this memorandum have been drawn from this Note. Hereinafter it will be cited as the "Harv. Note" with page citations to the Falk collection.

[36] See, Moore, "The National Executive and the Use of Armed Forces Abroad," in Falk, supra (n. 35) at 809, 817. This was originally an address given by Professor Moore at the Naval War College on Oct. 11, 1968. (Hereinafter cited as "Moore Address" with page citations to the Falk Collection); see Harv. Note at 637.

[37] Department of State, "The Legality of United States Participation in the Defense of Viet-Nam," 54 Department of State Bulletin 474 (1966), reprinted in "Symposium-Legality of United States Participation in the Defense in the Viet Nam Conflict." 75 Yale L.J. 1084 (1966). (Hereinafter cited as State Department Memo)

[38] "As precedent for Vietnam, however, the majority of the nineteenth century uses of force do not survive close scrutiny. Most were minor undertakings, designed to protect American citizens or property, or to revenge a slight to national honor, and most involved no combat, or even its likelihood, with forces of another state. To use force abroad on a notable scale, the President would of necessity have had to request Congress to augment the standing army and navy. Reveley, supra, n.8 at 1258."

[39] See generally, Harv. Note.

[40] See generally Harv. Note at 624, 631:

In the event of an armed attack on the territory of the United States proper, there is little question that the executive possesses the power to respond with all means at his disposal. Congressional approval of such action would probably be immediate. When, on the other hand, an attack is made on American persons or property abroad then the response should generally be proportional to the attack. The recent "Pueblo Incident" is a striking example of the fact that not every use of force against the United States is an act which places the country at war and that a variety of factors should enter into the development of an appropriate response. Short of an attack which threatens the life of the country, therefore, it seems that the President's power under the sudden attack theory is fairly limited.

There is also the danger of provocation, either planned or accidental. The mere presence of American forces near a hostile nation may provoke a "sudden attack". Consider, for instance, the U–2 incident in 1960, the various RB–47 incidents, the "Pueblo Incident". If the response to such attacks is not limited, then the country may become involved in a much larger conflict with little or no executive-legislative collaboration.

[41] See generally, Harv. Note at 364; Reveley, supra (n. 34) at 1257 et seq.; and Velvel. "The War in Viet Nam: Unconstitutional, Justiciable and Jurisdictionally Attackable," 16 Kan. L. Rev. 449 (1968). (Caveat: Prof. Velvel's article is highly one-sided).

Modern analoguses of the "neutrality theory" were the landing of troops in the Dominican Republic in 1965 and the recent dispatch of American naval vessels to the area around Haiti and Trinidad.

The real problem with the neutrality theory is remaining neutral. "Interposition" may easily lead to "intervention" and the Congress may be faced with a *fait accompli*. President Roosevelt accomplished an actual "intervention" in Panama in 1903 by "interposing" American troops there under an executive order, ostensibly to protect American property and citizens, but actually to support a friendly government.

However, American citizens who live or own property abroad probably should be able to expect some degree of aid from their government in time of conflict. But if the President has an unfettered right to employ the American military anywhere at anytime to protect American property, Congress may be left without an opportunity to assert its views. And, in many cases, the risks of deployment may be greater than the risks of restraint.

[42] See generally, State Department Memo; Alford, "The Legality of American Military Involvement in Viet Nam: A Broader Perspective," 75 Yale L.J. 1109 (1966); Harv. Note at 627 et seq.; cf., Memorandum of Lawyers Committee on American Policy toward Viet Nam, 112 Cong. Rec. 2552–59 (daily edn. Feb. 9, 1966).

Almost every national in the world has become classified as friendly, hostile, or neutral, and conflicts which might have seemed minor fifty or a hundred years ago are now often viewed as dangerous because they tend to upset the precarious world order and balance of power. Consequently, the idea of American security has expanded greatly so that an armed conflict in a far part of the world may appear to be a threat to the security of the United States itself. Unilateral Presidential employment of armed forces abroad, under the collective security theory has, therefore, been justified on much the same grounds as unilateral executive action under the sudden attack theory. The physical territory of the United States may be in no immediate, or even distant, danger. There may be no immediate threat to American forces, citizens, or property, but a conflict may seem to endanger the worldwide security system of the United States. The argument for Presidential action under the collective security theory is that the executive must have the power to respond quickly and forcefully to attacks which are considered important, for a variety of reasons, to the maintenance of the balance of power.

The executive action in Indochina has been premised largely on the collective security theory. The Indochinese War and other recent American military actions serve to indicate that the neutrality theory is no longer viable. In a world divided into friendly, hostile, and neutral countries, most armed conflicts will probably affect the existing order. It is difficult, if not impossible, therefore, for American intervention in such conflicts to remain wholly neutral.

The notion that the United States possesses extraterritorial security interests is not novel. The Monroe Doctrine of 1823 is a clear example. But the proliferation of bilateral and multilateral security agreements since the end of World War II has widened American security interests to include most of the world.

Accepting the general premise of the collective security theory, the question is: who determines when the security interest of the United States is threatened, the President or Congress? And who determines what response is to be taken to protect that interest?

[43] See generally, State Department Memo.

[44] See Text and notes, supra.

[45] If the balance has shifted too far in favor of the executive, then Congress must share the blame for its failure to act in the past. Is there any real concern or is it acceptable for the President to have primary responsibility for the use of American force abroad?

There is certainly a strong argument in favor of giving the executive the ability to respond with speed and force to crises which constitute a *direct* threat to the security of the United States. (See Harv. Note at 640.) But, there are equally strong, if not stronger, arguments in favor of increased congressional control over executive actions which may involve the United States in lengthy conflicts that are costly both in terms of lives and economic resources.

[46] See generally, Moore address.

[47] Velvel, supra (n. 41) at 457.

[48] The full text of the SEATO Treaty may be found in 6 U.S. Treaties 81; T.I.A.S., No. 3170; 209 U.N. Treaty Series 28; and Falk, supra (n. 35) at 561 and seq. The signatories were: Australia, France, New Zealand, Pakistan, Philippines, Thailand, the United States, and the United Kingdom. The Protocol to the SEATO Treaty provides in pertinent part that:

The parties to the Southeast Asia Collective Defense Treaty unanimously designate for the purposes of Article IV of the Treaty the states of Cambodia and Laos and the free territory under the jurisdiction of the state of Vietnam." 6 U.S. Treaties 87; T.I.A.S., No. 3170; 209 U.S. Treaty Series 36; Falk supra, (n. 35) at 568.

Laos was removed from the "protocol area" by the Geneva Accords of 1962. See: Protocol to the Declaration on the Neutrality of Laos, T.I.A.S. 5410; Falk, supra (no. 35) at 568.

Article IV goes to the core of the collective security agreement:

1. Each party recognizes that aggression by means of armed attack in the treaty area against any of the parties or against any state or territory which the parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.

2. If, in the opinion of any of the parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any party in the treaty area or of any other state or territory to which the provisions of paragraph 1 of this article from time to time apply . . . the Parties shall consult immediately to agree on measures which should be taken for the common defense.

[49] See generally, Falk* (supra).

[50] Art. IV. ¶1 of SEATO Treaty, supra (n. 48).

[51] Constitution, Art. 2 § 2, cl. 2.

[52] Id., Art. 2, § 3.

However, the treaty is rendered of no effect if it conflicts with subsequent legislation, since the lawmaking power of Congress is equally as potent as the treaty power.

A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty. *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616, 621 (1870); accord, *Pigeon River Co. v. Cox Co.*, 291 U.S. 138, 160 (1934); *Moser v. United States*, 341 U.S. 41, 45 (1951).

[53] See Harv. Note at 642–46.

The possibility of giving the war power to the Senate alone was specifically considered and rejected by the Framers. See, Appendix on the debate in the Constitutional Convention.

[54] Southeast Asia Resolution, Aug. 10, 1964, Public Law 88–408 (H.J. Res. 1145); 78 Stat. 384. The Resolution is also reprinted in Falk, supra (n. 35) at 579.

[55] See e.g. opinion of Chief Justice Marshall in *Talbot v. Seeman*, 5 U.S. (1 Cr.) 1, 25 (1801). And, as former Secretary of Defense McNamara has said, "There has not been a formal declaration of war—anywhere in the world since World War II." Address to American Society of Newspaper Editors May 18, 1966, *New York Times*, May 19, 1966, p. C–11, col. 1 (city edn.) at col 2.

[56] See generally, Moore Address; Alford, supra, (n. 42); Moore and Falk articles, supra (n. 49).

Whether the Tonkin Resolution is sufficient authority for the Cambodian invasion and the air action in Laos has not been considered by the legal commentators thus far, but the language of the Resolution is so broad that it could, arguably, authorize almost any American action in the Western Pacific area. See, remarks of Senators Fulbright and Cooper during the debate on the Resolution, 11 Cong. Rec. 18409–410 (1964).

[57] One commentator, however, does argue that Congress had sufficient information to form a reasonable opinion about the possible consequences of the Resolution, and that it was perhaps an unfortunate, but not unconstitutional adbication of responsibility. See, Moore Address at 821, and see generally Moore and Underwood, "The Lawfulness of United States Assistance to the Republic of Viet Nam," 112 Cong. Rec. 14943, 14960–67, 14983–89 (daily edn., July 14, 1966).

[58] It is at least questionable whether a resolution passed in response to a relatively minor attack on American warships was sufficient authorization for a war which has resulted in more American casualties than any war except the Civil War and World Wars I and II.

It has also been argued that Congress has given its implied approval to the Indochinese War because it has passed military authorization bills for the area. The argument based on enactment of military appropriations legislation is specious. The authorization of expenditures for the support of the soldiers in Southeast Asia War necessitated by the executive fait accomple in dispatching forces there. And, if the Framers had thought that the money power by itself gave Congress sufficient control over the military, there would have been no need to grant Congress the explicit war power.

See generally, Harv. Note at 646.

[59] Harv. Note at 646.

[60] The English Parliament used the purse power to counter Charles I and James II despotic powers. The Framers were well aware of its use as a guarantee of the powers and privileges of the legislature.

[60a] The resolution now before Congress, though carrying important political impact, would affect the constitutionality of subsequent executive action. If a resolution were made before the initiation of hostilities, Presidential commitment of American forces or significant expansion of the war would be precluded because the resolution would be a clear assertion of the primacy of Congress in the making of war. See, *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring). Once forces were involved in combat the resolution would prohibit expansion of hostilities.

[61] Such restrictions would be distinguished from the so-called "legislative veto," which reserves to Congress or one of its components the right to determine the actual

effect of the restriction by subsequent action falling short of actual legislation, such as disapproval by committee action or a resolution of one or both houses.

It is arguable that the inclusion of specific dates on which these restrictions take effect is an invasion of the inherent powers of the President as Commander in Chief. According to a strict construction of the Constitution, the President's inherent power may be limited to the power to repel sudden attacks only by immediate and temporary action. The expansion of his power through its unopposed exercise may be determinative of its constitutionality when Congress does not act, but it may be limited by Congressional action. The important question is whether the proposed limitation is reasonable. Since there is no indication that compliance with these restrictions is not fully feasible, there is no reason why the will of Congress should not be respected on this issue. The authors thus reject the argument.

[61a] Harris, *Congressional Control of Administration*, 213–215 (1964); Huzar, The Purse and the Sword, 211, 220, 240 (1950).

[62] 83 Stat. 469 (1969).

The inclusion of the phrase "in line with the expressed intention of the President of the United States" whatever its value as a face-saving device for the President, detracts not at all from the force of this proviso. The full text of the amendment reads:

"In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos or Thailand."

[63] Act of September 16, 1940 (54 Stat. 885).

[64] In 1955, for instance, Congress attached a rider, § 638, to the Defense Appropriation Act prohibiting use of funds appropriated therein "for the disposal or transfer by contract or otherwise of work that has been . . . performed by civilian personnel of the Department of Defense unless justified to the Appropriations Committee(s) . . ." 69 Stat. 321 (1955). A threat to Congress' constitutional powers arose when, in a message to Congress, the President stated that § 638 was unconstitutional and declared that "to the extent that this section seeks to give to the Appropriations Committees of the Senate and the House of Representatives authority to veto or prevent executive action, such section will be regarded as invalid by the executive branch of the government . . . unless otherwise determined by a court of competent jurisdiction." 101 Cong. Rec. 10459–60, 10416, 84th Cong., 1st Session (July 13, 1955).

But despite this threat, the Defense Department complied in full with the provisions of Section 638. The Department reported, as required by the Act, and agreed to delay action to accommodate Congress. And after the Armed Services Subcommittee of the House Appropriations Committee formally denied permission to dispose of several operations employing civilians, the President and the Defense Department followed its directions during the time that §638 remained law. Carper, *The Defense Appropriation Rider* (1960).

The response of the Comptroller General to this crisis adds further support to the position of Congress. A month after the President had made his threat, the Comptroller General informed Congress that on the fundamental basis that it is for Congress to say how and on what conditions public monies should be spent, the position of the GAO, as the agent of Congress, must be, in this case and always, to accord full effect to the clear meaning of an enactment by the Congress so long as it remains unchanged by legislative action and unimpaired by judicial interpretation. Id. Id. Therefore, he concluded, where a violation were found he would exercise his power as Comptroller General to disallow credits in the agencies accounts and hood the officers personally liable for the cost of the illegal activity. Id. Although #638 was an example of exceptable executive response to an unequivocal as a valid indication of expectable response to an unequivocal restrictions, particularly since the legislative veto is open to possible attack as a circumvention of the constitutionally required lawmaking process.

[65] U.S. Constitution, Art. I. #1.

[66] U.S. Constitution, Art. II, #3

[67] U.S. Constitution, Art. I, #8, 9.

[68] Even if the President acts beyond the constitutional limits of his powers, "Congress has not thereby lost its exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution in the Government of the United States, or any Department or officer thereof." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 588–89 (1952).

Whatever the merits of the arguments about the President's power to impound funds, such practices under which the executive exercises discretion within the limits set by Congress in appropriations acts can be clearly distinguished from a more clearly unconstitutional breach by the executive of restrictions on positive action. See, e.g., Fisher, "Presidential Impoundment of Funds," 38 Geo. Wash. L. Rev. 124, 130 (1969); Davis, "Constitutional Power to Require Defense Expenditures," 33 Fordham L. Rev. 39, 40–41, 55 (1964).

[69] In the words of Justice Black:

"The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. . . . The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control. . . . The Foundations of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times."

Youngstown Sheet & Tube Co. v. *Sawyer*, 343 U.S. 579, 587–89 (1952).

Other judicial pronouncements on the "raise and support" and appropriations clauses have construed them to give Congress power to control the creation of military forces. One early opinion stated the argument succinctly:

"The power of congress to raise and support armies . . . is clear and undisputable. The language used in the constitution in making this grant of power is so plain, precise and comprehensive, as to leave no room for doubt or controversy, as to where the supreme control over the military force of the country resides."

In re Griver, 16 Wisc. 423, 431 (1863).

Another court has stated the conclusion more forcefully:

"The purpose of the appropriations, the terms and conditions under which said appropriations were made, is a matter in the hands of Congress and it is the plain and explicit duty of the executive branch of the government to comply with the same."

Spaulding v. *Douglas Aircraft Co.* 60 F. Supp. 985, 988 (S.C. Cal. 1945), affirmed 154 F. 2d 419 (9th Cir. 1946).

[70] U.S. Constitution, Art. I, § 8.

[71] *The Federalist.*

[72] *Youngstown Sheet and Tube* v. *Sawyer*, 343 U.S. 579 (1952).

[73] For instance, Justice Frankfurter felt that the absence of Presidential power would have been beyond contention "had Congress explicitly negated such authority in formal legislation." *Id.* at 602.

Rejecting the view that the Commander in Chief clause supports "any Presidential action, internal or external, involving the use of force," Justice Jackson concluded that "Congress alone controls the raising of revenues and their appropriation and may determine in what manner and by what means they shall be open for military and naval procurement." *Id.* at 643.

[74] The much-noted concurring opinion of Justice Jackson stated the proposition in more detail:

"Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress. . . . When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb . . . Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting on the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for, what is at stake is the equilibrium established by our constitutional system." *Id.* at 635–638.

[75] Exceptions broader than these are not required by the Constitution, since Congress could authorize at any time military action beyond immediate self-defense.

[76] *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579, 654 (1952).

Mr. EAGLETON. Mr. President, I think that ample legal authority has been summoned by the sponsors of this bill and an ample amount of material is available in support of S. 2956.

There should be no question that the Foreign Relations Committee is the appropriate forum to consider legislation which would establish, within the limits of the Constitution, a procedure to assure that Congress is involved in the decision to introduce the Armed Forces of this Nation in hostilities. The decision to take this action is, after all, the ultimate alternative and some say failure, of foreign policy.

Mr. President, I refer my colleagues to the Senate Manual and the Standing Rules of the Senate. On pages 32 and 33 it is stated that the Committee on Foreign Relations shall consider legislation pertaining to, among other things, relations of the United States with foreign nations, treaties, protection of American citizens abroad and intervention abroad, and declarations of war. All of these subjects pertain in some way to this legislation but the last one I have mentioned—intervention abroad and declaration of war—is the central issue confronted by this bill.

The Ervin-Hruska amendment would refer the War Powers Act to the Judiciary Committee to "consider the constitutional questions involved." The Standing Rules, however, grant Judiciary the authority to consider "constitutional amendments." If the proponents of this amendment are interpreting that very specific grant to mean that they have a mandate to consider "constitutional questions," we can only deduce that they would propose to have all legislation pass through Judiciary. I do not believe that that is the intention of the Standing Rules of the Senate.

If this body were to define committee jurisdictions as broadly as this amendment would appear to require, we would be constantly hamstrung with inconsequential bickering by our standing committees.

We owe it to our constituents to avoid that state of intransigence.

The purpose of the War Powers Act is not to amend the Constitution but to fulfill it.

The sponsors of S. 2956 believe that the

Founding Fathers were correct in their intention that the collective judgment of both Congress and the President would be applied to the decision to go to war. We do not seek to amend that principle, we seek to fulfill it.

The growth of the Presidential war power and the corresponding abdication of responsibility by the Congress has necessitated this legislation. This shift of power and responsibility is unfortunate but temporary imbalances are part of our adversary system. The Founding Fathers understood this and left with Congress the authority in the "necessary and proper" clause to make laws to perpetuate and give relevancy to our tricameral form of Government.

I have the utmost respect for the distinguished Senator from North Carolina. As chairman of the Judiciary Subcommittee on the Separation of Powers he has been extremely effective in protecting the civil liberties of those who have been subjected to the heavy hand of the executive bureaucracy. He has also been a consistent advocate of a stronger role for Congress and has concerned himself with the growth of executive power in all legislative areas.

The Senator from Nebraska has been a consistent and honest advocate of the positions he espouses.

In this matter I regretfully disagree with the distinguished proponents of this amendment.

The sponsors of the war powers bill are also concerned with the growth of the executive and the effect of this growth on a specific policy decision—the decision to go to war. The Foreign Relations Committee quite properly considers matters of this nature and, unless a constitutional amendment is involved, always has.

The public record of hearings conducted on war powers legislation are extensive and represent the most thorough study on this subject available. Some of the best foreign policy experts and constitutional lawyers in the country have given testimony before the committee.

In addition to the Foreign Relations Committee hearings, this legislation has been subjected to a thorough and penetrating debate in the public sector. The pros and cons of the war powers bill have been argued in every university in the country, and especially at Yale, where everybody but Eugene Rostow is in favor of the war powers bill. The Nation's press has also given express coverage to all sides of this question in the highest journalistic tradition.

Mr. President, this body in modern times has been remiss by its failure to assert its constitutional prerogatives to decide when this country will go to war. We do not need further study to show us that. We are ready to act now to reestablish the proper role of Congress under our Constitution.

Mr. JAVITS. Mr. President, I am sorry the Senator from Ohio is not here because I would like to comment on the question which he has posed in response to the arguments made by the Senator from Colorado (Mr. DOMINICK).

The key to the motion which is going to be voted on tomorrow is assumed by the question, rather than answered.

The key to the motion tomorrow is whether or not we are trying to change the Constitution. We could not if we tried. But are we trying? The answers, say the proponents of this motion, is yes. That would be the only substantive excuse for reference to the Committee on the Judiciary, which otherwise has no jurisdiction, let alone does delaying this matter for whatever number of days the Senator from Nebraska (Mr. HRUSKA) finally chooses, which I understand to be 45 days, and then simply turning the matter back to us in a month and a half when we will be so loaded with so many things it will suffer seriously as a result.

Mr. President, if you couple the fact that the Committee on the Judiciary has no jurisdiction with the fact that this is a tactic of delay as best, I really see no justification whatever for the reference. This is no guarantee that the Senate will approve this measure.

Many amendments are pending and all of them will be acted on. Some of them are substantive. That is a far cry from shunting the matter off to another committee.

In other words, the hearing record itself discloses very thorough consideration, and the year for debate and discussion which Senator STENNIS, whose support is so critical on this matter because he is so allied with the question of defense in this country, upon which the whole argument in the bill is based has passed and there has been very serious debate and discussion.

Now, the question still is full of thorny situations, very serious ones, and the old addage that those who do not profit from experience are condemned to repeat it, is very apposite in this situation.

So I see no substitute for the Senate dealing with this issue and I hope very much that the Senate will not simply shunt it off when the vote comes tomorrow for the two reasons stated: One, there is no jurisdiction, and two, there is no benefit to be gained but rather loss suffered from the time which is sought to be taken.

I alluded earlier today to the fact that we, and others, I am sure, have received the arguments of the State Department of talking points, as they call it, on the war powers bill. I was deeply interested in one of them because it so clearly indicates where we think the State Department is completely wrong in the points of difference which exist between the opponents and proponents of this measure.

The State Department stated in its memorandum on page 4:

> c. The history of the drafting of the Constitution shows that the Founding Fathers did not so clearly demarcate the respective powers of the President and the Congress in the use of the armed forces as the Senate Foreign Relations Committee report indicates. The Committee Report states that:
>
> "The framers vested the authority to initiate war in the legislature, and in the legislature alone. . . . The division of authority intended by the framers was explicit: the Congress was to 'declare'—that is to authorize the initiation of—war. The President, as Commander in Chief, was to respond to sudden attacks and to conduct a war once it had started and command the armed forces once they were committed to act."

This formulation of the issue really begs the question, for no one argues that the power to declare war resides anywhere other than in the Congress. But the other side of the question is to what extent the President has the power to use the armed forces by virtue of his role as Chief Executive, as Commander in Chief, and in the conduct of foreign relations.

Then, the State Department goes on to develop the following. This is the show of force argument, which is the only argument made against this measure. It goes on to say:

> There are a number of conceivable situations in which military forces might be used to demonstrate a United States willingness to protect United States nationals, territories, facilities, and other interests, which the Framers presumably would not have regarded as involving "war" and thus requiring Congressional action, even in the absence of a sudden attack.

Mr. President, the point is that we are talking about apples and the State Department is talking about oranges. There is no question about the one central point which they absolutely omit, and that is that the show of force involves the decision of the President. A great nation cannot bluff. We cannot. The Russians cannot. So if the President feels, when he commits troops to a show of force, that involves imminent involvement in hostilities, all the bill says is that if there is an imminent danger of war, he should come to the Congress; but if he commits troops to a show of force which risks hostilities—they are the State Department's words; the bill does not say it—he has got to come to Congress.

The Senator from Virginia (Mr. SPONG), the Senator from Mississippi (Mr. STENNIS), I, and other sponsors of the legislation have said it is the President's judgment whether there is or is not imminent threat of hostilities; but in the face of that judgment, if he makes that judgment affirmatively, then he has to come to the Congress, because great nations cannot bluff, and then we must be able to go through the war if one starts.

Then we have the dilemma that, once it starts without Congress' consent, the interposition of the appropriation power is not adequate to give Congress authority to deal with that war which only it should have had the authority to start. But because of modern situations—which is exactly what happened in the Gulf of Tonkin situation—it was never stated better than by Professor Bickel, who pointed out that at a given point an incident or an action to repel attack—even granted that there had been an attack on American destroyers in the Gulf of Tonkin—becomes a war.

How much evidence do you need, Mr. President, with 100,000 dead and 300,000 wounded and $100 billion of treasure and 8 years of time? What else do you need, Mr. President, in order to prove to you that it is a war?

So that is the essential point we are making. We are making the point that we are seeking, not to change the Constitution; we are simply seeking to insert a methodology—very well put by the Senator from Virginia (Mr. SPONG)—in respect of the Constitution to deal with

a situation which otherwise escapes definition, but which, in terms of actual conduct of government, puts us in war.

I have said, and others have said, that the 30-day period is only to arrive at a time. It is quantitative rather than qualitative. Incidentally, if it turns to war, we say Congress can set a lesser time. In given cases that may prove to be a lesser time. But we cannot and we do not deprive the President of any power by making those definitions. The President still has to make the ultimate decision when he engages in a show of force that puts us in imminent danger of hostilities. If in his judgment it does, he should come to Congress. If in his judgment it does not, he does not have to come to Congress. That is exactly what the language means.

Mr. DOMINICK. Mr. President, will the Senator yield for a clarification?

Mr. JAVITS. Not yet.

So it does not inhibit any action which the President constitutionally may take on his own, except when there are hostilities or, in his judgment, the imminent threat of hostilities.

Now I yield.

Mr. DOMINICK. The Senator, as I understand it, is maintaining that we are not really attempting to limit the President's authority in those instances, at least, where he has been authorized under section 3. But suppose the President, pursuant to one of those sections, uses our Armed Forces and is engaged in conflict which he thinks is in the interest of the United States, and Congress acts to cut that off under section 6. What happens to his authority then? Does he still retain that? Can he ignore Congress?

Mr. JAVITS. Congress has the authority, in my judgment, to define what it considers a reasonable time within which an incident—what the Founding Fathers called the repelling of sudden attacks—becomes a war. That is our implementation of that concept. But we could not—and we do not want to—deprive the President of his constitutional power.

The President can, in pursuance of his constitutional powers, go ahead and do what those constitutional powers permit him to do, but we lay down a quantitative definition as to when we consider the exercise of those powers to put us into war, and then he must obtain the authority to proceed, as the decision to take the Nation to "war," under the Constitution, requires action by the Congress.

Incidentally, the point made by the Senator from Ohio (Mr. TAFT) dealt with a "show of force" question, but I am willing to deal with this point. In other words, the President may repel a sudden attack even after Congress has passed a resolution, if that would be another situation, under which he could use his power to repel an attack.

I repeat, we do not abrogate his constitutional authority to repel an attack. But we certainly can say to the President, "Look, Mr. President, if you get into a situation which is transforming from emergency defensive action into imminent threat of war, we must be brought in." That is all we say in this language.

Mr. DOMINICK. Mr. President, will the Senator yield for another supposition, I suppose it might be called?

Mr. JAVITS. I yield.

Mr. DOMINICK. Suppose under section 3, at the top of page 8, subsection (1), Puerto Rico is under attack and the President had put our troops into action and had taken whatever he considered appropriate retaliatory actions following that attack.

Mr. JAVITS. Very well.

Mr. DOMINICK. For some reason we cannot now foresee, Congress says, "No, you cannot do that," after 3 days, while Puerto Rico was still under attack. What effect would that have?

Mr. JAVITS. The Senator says while we are under attack. We have actually amended the bill to take in the situation of disengagement while under attack. We have dealt with the subject and have defined it specifically. In other words, his purpose, and his intentions are that the operations must be to disengage, but he can remain engaged so long as it is necessary to protect our troops. We have answered that, ourselves. It is not necessary to answer it by implication from the bill. We have answered that in terms of an amendment.

Mr. DOMINICK. The amendment was to section 6.

Mr JAVITS. As a matter of fact, it went to sections 5 and 6.

Mr. DOMINICK. Let me ask one more question on imminent threat. Let us suppose we have a situation such as took place in 1970 or 1967 in the Middle East, and the President orders the 6th Fleet to proceed close to the shore, with orders to put it on the alert in the event of any Russian engagement, and 2 days later Congress says, "You cannot do that. You have to get out of there." What is the President going to do there?

Mr. JAVITS. Congress is not self-operative here. The President acts, under the bill, and must report everything in detail to Congress. The bill applies to "hostilities" or situations where hostilities are clearly indicated by the circumstances. The President must decide under the law whether the circumstances are governed by the bill. He has to make the finding. If he did not make the finding——

Mr. DOMINICK. Let us suppose he did.

Mr. JAVITS. If he did make the finding, then he gives us notice that we must share in the responsibility for what may be war.

The Senator seems to be assuming the infallibility of the presidency and the fallibility of Congress. There is no evidence for that. On the contrary, that is what we are contending; we are contending in this case that when we are going to expose the people's bodies and property, the people are entitled to have involved, as an element of the process of decision, their directly elected representatives by State and district.

Mr. DOMINICK. So if the United States should, then, withdraw because of the act of Congress, despite the fact that the President has certified that this is an area of extreme danger and crucial importance, and if Israel, for example, gets overrun by the Russians, and the Greeks get overrun by somebody else, are we to do nothing?

Mr. JAVITS. Let me ask the Senator a question in return, because it is an answer rather than a question. Because a country may be overrun, that does not mean the United States is committed to intervene or should intervene. We say a commitment to intervene must be "pursuant to specific statutory authorization"—a decision not just of the President, but also of the Congress.

Suppose, heaven forfend, that South Vietnam is overrun. Does the Senator believe the United States ought to send its ground forces back, as it did in 1964, in order to defend South Vietnam?

Mr. DOMINICK. No; I said at the very beginning that I did not think that was proper.

Mr. JAVITS. Of course not. But that is a part of the issue. So we would be saying to the President that the overall interest of the United States and everything it represents, and that of the people, dictate that we have to stay out of such a situation.

Mr. DOMINICK. I did not say that.

Mr. JAVITS. No; I am not talking about Vietnam now. I am talking about the question propounded by the Senator. I mentioned Vietnam because it was illustrative.

Mr. DOMINICK. Mr. President, if I may say so, I do not happen to agree with the Senator from New York, because I think it is unconstitutional, which is another reason why I think it ought to go before the Judiciary Committee for further hearings, regardless of the wisdom of it.

Mr. JAVITS. I realize that that is how the Senator feels, and that is why I pointed out that the vote tomorrow will be a substantive vote, not a procedural vote. The Senators who feel that this is either unconstitutional or will be an effort to change the Constitution undoubtedly will vote for the reference. On the other hand, those of us who believe that the war power of Congress is something that has been undermined, which has resulted untold impairment of the national interest, particularly circa 1962 to 1968, will vote against the motion.

Mr. President, there is no doubt about the fact that the issue is a substantive one. Men of the greatest sense of honor, "President's men," some of whom have testified before us, feel that they have to sustain, just as the State Department thinks it has to sustain, the outermost reaches of the President's power with respect to war.

That is what this is all about. We would not be arguing about the question if experience had not shown the present situation to be highly improper, and experience has shown that. We have a right to consult experience. As the Senator from Mississippi (Mr. STENNIS) has said very truly and accurately, this is not just a legal question, it is a political question; and as with any political question, we have a right to consult experience. And experience deeply, profoundly, and in my judgment implacably dictates that we have to act in this situation, and not just nebulously, but decisively.

Mr. President, it is high time to act, because otherwise improvidence could really engulf this Nation, as it threatens to do in respect of the Vietnam war. I am not one who agrees at all that the Vietnam war is not to be consulted. I think

the Vietnam war has to be consulted. That is experience. We have had 8 years of experience with Vietnam, and have learned a thing or two.

Mr. President, we are trying to stabilize our national situation and enhance the credibility of the American commitments to the world by passing a law such as this. If we find that the law is inadvisable, then we can change it, because it is a law and is not a constitutional amendment. I would be against a constitutional amendment. That would be unwise and necessary. But in order not to have a breakdown in the backing of the people for our Government, we need to have some safeguard, which we do not now have, and that is the reason for this bill.

Mr. President, there has been a good deal of discussion about constitutionality in connection with this matter, and the intention of the Founding Fathers, and so forth. One of the leading experts in this country on this subject is Irving Brant, the definitive biographer of James Madison.

Mr. Brant has just written me a most interesting and comprehensive letter, relating the debates of the Founding Fathers as to the constitutional authority which the President has and that which Congress has, directly to this bill. He comes out strongly and decidedly in favor of this measure.

Because I feel the letter should be available to all Senators, and because it is not unduly long, I ask unanimous consent that it be printed in the RECORD.

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

EUGENE, OREG.,
April 3, 1972.

Senator JACOB K. JAVITS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JAVITS: I have received the Hearings and Committee Report on Senate Bill 731, re-introduced as S. 2956, and with them your covering letter containing the following paragraph:

"Any comments you might wish to make—public or private—will, I am sure, be of value to Senators and to public understanding of the issues, as the Senate approaches its debate on this vital issue."

My article on the President's War Powers, published in the Washington Post of July 4, 1971, and placed by you in the Congressional Record and the Hearings on S. 731, was confined to an analysis of the testimony of Secretary of State Rogers concerning this bill, before the Senate Committee on Foreign Relations. Since the hearings closed the Nixon Administration has continued its opposition to your War Powers Bill. The printed Hearings reveal that administration spokesmen opposing the bill throw much heat and little light upon the constitutional question involved. Their opposing arguments are hardly more than repetitious assertions that the President possesses inherent power as Chief Executive, and constitutional power as Commander in Chief, to conduct almost any sort of undeclared war; subject to no constitutional control by Congress except, perhaps, through its power to withhold appropriations for support of military operations.

What is the fundamental lesson taught by the 873-page record of the Senate's hearings on war-power legislation? It is, I think, that the security of the United States against both external aggression and internal disturbance is menaced infinitely more by the uncontrolled exercise of executive power than by congressional resistance to its uncontrolled exercise. Overwhelming proof of this is found in the Hearings, both in the extraordinary theoretical claims of power by administration witnesses and supporters, and by the detailed analyses of past and current exercise of the war power by the Executive

All of this indicates that opposition to the War Powers Bill will follow the same pattern in Senate debate. To cope with that, I believe there is need of a more extensive survey of the views on this subject held by early American statesmen, before war powers were engrafted on the Constitution by mere Executive seizure. Whatever competence I possess in that field is a by-product of twenty-three years devoted to writing the life of James Madison, chief architect of the Constitution and a leading expounder of its meaning.

Madison worded the war-power clause and in doing so stated its meaning. For the next twenty-five years he was the most authoritative, most persistent and most widely accepted definer of the division of the war power between Congress and the President. He began that course in Congress and continued it through sixteen years as Secretary of State and President of the United States. Those sixteen years saw Europe completely engulfed in the Napoleonic Wars, and included our own War of 1812 with England.

Contrary to the notion fostered in his day by Federalist politicians (when they were not calling him a war mad dictator) and unthinkingly accepted by many historians, Madison was not a timorous pacifist. He was an activist President, a nationalist, almost a chauvinist. Again and again, in diplomacy, he used the threat of war to gain national objectives; but in every instance it was the threat of congressional action uninfluenced by executive pressure. At every contact with this issue, in the framing of the Constitution, in Congress, and in the executive branch of government, he denied the constitutional right of the President to take such steps as have been taken by Lyndon Johnson, Richard Nixon and various earlier Presidents.

The Federal Convention of 1787 took final action on the war power on August 17. The clause as it had come from the Committee of Detail gave Congress power "To make a war." As described in Madison's semi-official *Notes of Debates*, Charles Pinckney of South Carolina thought the proceedings of Congress too slow and suggested the Senate as a proper body to exercise this power. His state colleague Pierce Butler "was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it."

Thereupon Madison, seconded by Elbridge Gerry of Massachusetts, "moved to insert 'declare,' striking out 'make' war, leaving to the Executive the power to repel sudden attacks."

Roger Sherman of Connecticut agreed that "The Executive should be able to repel and not to commence war," but he thought " 'Make' better than 'declare' the latter narrowing the power [of Congress] too much."

Oliver Ellsworth of Connecticut also preferred "make," saying that there was a material difference between making war and making peace: "It should be more easy to get out of war, than into it."

Elbridge Gerry, evidently harking back to Butler's proposal, said he "never expected to hear in a republic a motion to empower the Executive alone to declare war."

George Mason of Virginia felt the same way. He protested "against giving the power of war to the Executive, because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred 'declared' to 'make.' "

On the vote as first taken, "declare war" was approved by all states except New Hampshire and Connecticut, but Madison entered the following footnote:

"On the remark by Mr. King (of Massachusetts) that 'make' war might be understood to 'conduct' it which was an Executive function, Mr. Ellsworth gave up his objection, and the vote of Connecticut was changed to—ay."

Thus only one delegate—Butler—regarded the initiation of war as a natural or desirable presidential function. All others treated the initiation of war as legislative in character, the conduct of war as executive, synonymous with "making" war. Two delegates—both opposed to presidential power to initiate war—reversed their position when this was pointed out. So, instead of the power given Congress to "declare" war being an exception from a general executive war power, the latitude thus given to the President "to repel sudden attacks" was intended as an exception—the sole exception—from the exclusive power of Congress to initiate war.

The power "to repel sudden attacks" can reasonably be understood, as it is in the Javits Bill, to include emergency measures to protect the lives and property of American nationals. But the ultimate conclusion is inescapable: the power given Congress to "declare war" debars the President from initiating hostilities except for the limited and temporary objective set forth in the constitutional debates, and inherent in the natural and constitutional division of authority between the two branches of Government.

The issue of executive war power first presented itself in 1793, when the French Revolution precipitated twenty years of warfare between France and England. On April 22 of that year President Washington issued a proclamation of neutrality, announcing and calling on the American people to support "a conflict friendly and impartial towards the belligerent powers." The proclamation was actually strongly anti-French, because the Franco-American Treaty of 1778, still on the books, bound the United States and France to defend each other's territories on the North American continent against all other powers, "mutually from the present time and forever."

Secretary of the Treasury Hamilton argued, in a cabinet meeting, that the change of government in France absolved the United States from any obligation to uphold the treaty. This brought the comment from Madison that if a change of government absolved a country from public engagements, it would apply equally to domestic affairs; that would involve "a destruction of the social pact, an annihilation of property, and a complete establishment of the state of Nature." Even without Hamilton's contention concerning the treaty, Madison thought, the executive policy bore an "Anglified complexion." Peace, he wrote to Secretary of State Jefferson, no doubt ought to be preserved at any price that honor and good faith would permit, but did the President have constitutional power to decide what policy ought to be pursued? He thought not:

"The right to decide the question whether the duty and interest of the U.S. require war or peace under any given circumstances, and whether their disposition be towards the one or the other, seems to be essentially and exclusively involved in the right vested in the Legislature, of declaring war in time of peace; and the President and Senate of making peace in time of war. . . . [A]n assumption of prerogatives not clearly found in the Constitution and having the appearance of being copied from a Monarchical model, will beget animadversion equally mortifying to him and disadvantageous to the Government."

Six days later (June 19, 1793) Madison returned to the theme. The President's proclamation, he wrote to Jefferson, "wounds

the national honor, by seeming to disregard the stipulated duties to France." It showed indifference to the cause of liberty:

"And it seems to violate the forms and spirit of the Constitution by making the Executive Magistrate the organ of the disposition, the duty and the interest of the nation in relation to war and peace—subjects appropriated to other departments of the government."

Such infractions of the Constitution under the high auspices of Washington, Madison remarked in one of these letters, "may consecrate the evil till it be incurable." The remark about "auspices" implied, correctly, that although the President was pronouncing national policy, Hamilton was formulating it. The roles of Hamilton and Madison became clear to the public when they engaged in a running newspaper battle under pseudonyms. Hamilton as "Pacificus" defended the proclamation; Madison as "Helvidius" attacked the constitutionality of Hamilton's construction of it. Everybody in the country knew who was which.

Hamilton declared that the clause in the Franco-American treaty of 1778, requiring the United States to protect France's American possessions from attack, ran counter to the President's proclamation of neutrality. That, in his opinion, did not invalidate the proclamation. To the contrary, it was "virtually a manifestation of the sense of government that the United States are, *under the circumstances of the case, not bound* to execute the clause of guaranty."

It was the President's duty, Hamilton argued, to preserve peace until Congress declared war. In fulfilling this duty he "must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government." In this field the powers of the President were broad, that of Congress narrow, because the powers of war and peace were by nature executive; the power of Congress to declare war was merely an exception from the executive power.

It was true, Hamilton admitted, that the power to judge the need of war was part of the power to declare it. But, he contended, this lesser power was concurrent in Congress and the President, not being excepted from the general executive power.

Madison in reply assailed Hamilton's central proposition—"the extraordinary doctrine that the powers of making war and treaties are in their nature executive." That was a fallacy, he said, growing out of the fact that making war and peace are high acts of sovereignty, and in European monarchies sovereignty resides in the prince. There was no logic in such an assignment:

"If we consult, for a moment, the nature and operation of the two powers to declare war and to make treaties, it will be impossible not to see, that they can never fall within a proper definition of executive powers. The natural province of the executive magistrate is to execute laws, as that of the legislative is to make laws. All his acts, therefore, properly executive, must presuppose the existence of the laws to be executed. A treaty is not an execution of laws; it does not presuppose the existence of laws. It is, on the contrary, to have itself the force of a *law*, and to be carried into *execution*, like all *other laws*, by the *executive magistrate*."

Madison then turned to the war power:

"The power to declare war is subject to similar reasoning. A declaration that there shall be war, is not an execution of laws; it does not suppose pre-existing laws to be executed: it is not, in any regard, an act merely executive. It is, on the contrary, one of the most deliberative acts that can be performed; and when performed, has the effect of *repealing* all the *laws* operative in a state of peace, so far as they are inconsistent with a state of war; and of *enacting*, as a *rule for the executive, a new code* adapted to the relation between the society and its foreign enemy."

Madison declared the Constitution to be in full harmony with his analysis:

"In the general distribution of powers, we find that of declaring war expressly vested in the congress, where every other legislative power is declared to be vested; and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then to be, that it is of a legislative and not an executive nature."

He assailed Hamilton's effort to find a choice of "war or peace" in the President's position as commander in chief of the armed forces. The bearing of this power on making treaties of peace, said Madison, was not even worth discussing. And instead of being analogous to the power of declaring war, his post as commander in Chief "affords a striking illustration of the incompatibility of the two powers in the same hands. Those who are to *conduct* a war cannot in the nature of things, be proper or safe judges whether *a war ought* to be *commenced, continued, or concluded*. They are barred from the latter function by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws."

Madison challenged the claim of concurrent power in the President and Congress to pass on the desirability of going to war or remaining at peace:

"The declaring of war is expressly made a legislative function. The judging of the obligation to make war, is admitted [by Hamilton] to be included as a legislative function. Whenever, then, a question occurs, whether war shall be declared, or whether public stipulations require it, the question necessarily belongs to the department to which those functions belong—and no other department can be in the *execution of its proper function*, if it should undertake to decide such a question."

Madison carried on with a conjectural case that had no bearing on the dispute over Washington's neutrality proclamation, but which, by singular chance, fits perfectly the present disagreement between the President and Congress over the undeclared war in Indo-China:

"If the legislature and the executive have both a right to judge of the obligations to make war or not, it must sometimes happen, though not at present, that they will judge differently. . . . In what light does this present the constitution to the people who establish it? In what light would it present to the world a nation thus speaking, through two different organs, equally constitutional and authentic, two opposite languages, on the same subject, and under the same existing circumstances?"

If, said Madison, the power to judge the need of war or peace is concurrent, the power of which it is a part must also be concurrent; but the Constitution conferred that exclusively on Congress. Where did "Pacificus" get his doctrine, vicious in theory and dangerous in practice, of implied executive participation in a power exclusively assigned to Congress? From but one possible source. Treaty and war powers "are *royal prerogatives* in the *British Government*, and are accordingly treated as *executive prerogatives* by *British commentators*."

Hamilton, his main position riddled, made slashing attacks on the "French faction" in American politics, but offered no rebuttal of Madison's constitutional arguments. President Washington's next address to Congress, in passages written by Jefferson, construed the neutrality proclamation as Madison did—as a mere warning to Americans to avoid acts of hostility; a meaning impliedly perverted by Hamilton. Madison himself, chosen to write the customary reply of the House to the President, gave the proclamation the same narrow and harmless construction.

The conflict in its true essentials, as fought by Madison and Hamilton, bears an extraordinary resemblance to the current clash between the Nixon Administration and the Senate Committee on Foreign Relations over the Javits Bill to regulate the war powers of the President. George Washington, who was dragged into the melee by surprise, quietly went over to the other side. President Nixon has not yet done so.

The eighteenth century conflict came to life once more in 1797, after Jay's Treaty drew the United States into a wartime commercial alliance with Great Britain. This led to French attacks on American shipping, met by American counter-measures. President Adams sent a negotiating team to Paris and issued an order forbidding the arming of American merchant vessels. In the spring of 1798, the American peace envoys reported solicitation of a bribe by Talleyrand—the "XYZ Affair." President Adams sent the dispatches to the Senate and joined with that body in ordering their publication. He also revoked his order forbidding the arming of merchant vessels.

Madison was greatly disturbed, he wrote, at the way President Adams was cracking the constitutional barriers against executive war power. By *withdrawing* the order against the arming of merchantmen, he indirectly *authorized* that course—something Congress alone had the power to do. To Jefferson, on April 2, 1808, he wrote:

"The first instructions [forbidding arming] were no otherwise legal than as they were in pursuance of the law of Nations, and consequently in execution of the law of the land. The revocation of the instructions is a virtual change of the law, and consequently a usurpation by the Executive of a legislative power . . . the regulation . . . comes expressly within the power, 'to define the law of Nations,' given to Congress by the Constitution."

The whole course pursued by President Adams disturbed him:

"The Constitution supposes, what the history of all governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care, vested the question of war in the Legislature. But the doctrines lately advanced strike at the root of all these provisions, and will deposit the peace of the country in that department which the Constitution distrusts as most ready without cause to renounce it."

Ultimately, to the country's amazement, President John Adams turned "dove." Partly, this was a return to common sense; partly a reaction against the discovery that Hamilton (a private person) was secretly running the President's cabinet while striving to provoke a declaration of war against France. Adams fired the France-haters from the cabinet, sent a genuine peace mission to France, and brought an end to the undeclared naval war which he himself had brought on.

Looking at the whole record, President Adams did not grossly exceed his constitutional powers. Although Jay's Treaty provoked France to attack American commerce, the protective measures taken by the President might be construed at the outset as a repelling of sudden aggression. Adams transgressed the spirit of the Constitution more sharply than he did its letter. The criticisms of him by Madison amounted to a ban of all presidential war initiatives except the one Madison himself implanted in the Constitution by the change of wording which permitted the President to "repel sudden attacks." His principal sins, as Madison saw them, were his efforts to formulate a war policy (later abandoned) and his assumption of authority to authorize the arming of the merchant marine.

From 1801 to 1817 the Presidency was held

by two strict construers of presidential war powers, Thomas Jefferson and James Madison; and Madison for the first half of this period was Jefferson's Secretary of State. Except for the brief Peace of Amiens (1802–1803) the Napoleonic War raged until 1814 and the United States constantly faced the menace of war with one power or the other—ultimately engaging in the War of 1812 with England. How did the practices of these two leaders compare with their principles?

President Jefferson broke away from the European practice of paying tribute to the "Barbary pirate" nations of North Africa. Tripoli declared war on the United States. Jefferson sent a naval squadron to the Mediterranean with orders to protect American commerce by defensive measures only. Reporting to Congress (December 4, 1801) on the capture of a Tripolitan ship of war, he said:

"Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel, being disabled from committing further hostilities, was liberated with its crews."

Jefferson suggested that Congress authorize "measures of offence also." He was communicating all material information to Congress, in order "that, in the exercise of this important function, confided by the Constitution to the Legislature exclusively, their judgment may form itself on a knowledge and consideration of every circumstance of weight."

Alexander Hamilton assailed this, with good reason, as too restrictive. It was, said he, "the peculiar and exclusive province of Congress, *when the nation is at peace* to change that into a state of war . . . But when a foreign nation declares, or openly and avowedly makes war upon the United States, they are then by the very fact *already at war,* and any declaration on the part of Congress is nugatory; it is at least unnecssary."

Hamilton's argument harmonized with Madison's 1787 avowal of a power in the President "to repel sudden attacks" without a declaration of war by Congress. A deliberate, government-authorized, unprovoked attack on an American warship anywhere in the world is an attack on the United States. That does not mean that the President can constitutionally weasel the United States into an undeclared war, to retaliate an alleged but unproved "Gulf of Tonkin incident," for which, if it occurred at all, the American warship offered provocation.

From 1801 through 1803 the United States negotiated the Louisiana Purchase, with Jefferson and Madison putting constant pressure on France. The French, Jefferson told French Chargé Pichon, would remain in Louisiana "no longer than it pleases the United States." Custom, language and geography, Secretary Madison said to Pichon, drew East and West together, and with all America united, "France cannot long preserve Louisiana against the United States." The warnings were climaxed in 1803 by words of Madison at a dinner party, spoken so loudly, Pichon reported, that many heard them:

"He told me that it was true the nation was in a ferment, especially in the West; that it felt its strength, and that it needed all the confidence it had in the government to prevent it from acting. That this circumstance had made the United States itself examine the national disposition, and to conclude that it held the balance in the new world and could decide it at any moment: there was one power [England] which realized this perfectly, and it was to be hoped that all would realize it."

Here was power politics at its peak, pointing toward undeclared war, initiated not by the President but by uncontrollable hordes of westward migrants. To these forces, reinforced by the need of war funds, Napoleon capitulated and sold Louisiana.

As trouble mounted at sea, President Jefferson vainly sought, by means of the unenforceable Embargo Act of 1807, to induce England and France to repeal their confiscatory edicts, through which both countries were seizing or sinking American ships trading with the belligerents. Three weeks before Madison became President, he entered upon a far different course. It should be presumed, he wrote to Minister William Pinkney in London, that if the belligerents resumed the oppression of American commerce (after repeal of the embargo), "the next resort on the part of the United States will be, to an assertion of those rights by force of arms."

No *authoritative avowal* of such an intention, he said, could be made except by Congress. However, should "an expression of the Executive branch of our government be deemed a ground for revoking the British Orders, you will be free to declare that opinion to be, that in case these orders should be revoked, and the decrees of France continue in force, hostilities on the part of the United States will ensue against the latter."

Be careful, he added, "not to attach to the opinion of the Executive any weight inconsistent with the constitutional limits of his authority." A corresponding proposition was made to France.

On March 15, 1809, two weeks after he took office, President Madison instructed the American ministers at London and Paris to give notice that if one belligerent revoked its edicts and the other did not, "it is the opinion of the Executive, that Congress will, at the ensuing special session, authorize acts of hostility on the part of the United States against the other."

In 1810 Congress by the Macon Act made repeal by one belligerent, and non-repeal by the other, ground for a presidential proclamation of non-intercourse with the offending nation. France formally revoked her decrees; England did not, and on November 2, 1810, the President proclaimed nonintercourse with England, to be effective in three months. On that same day Madison sent the following message to the French Government:

"The Executive thinks that the measures he will take in case England continues to interfere with our communications with Europe will necessarily lead to war."

The measures, which did lead to war, were those authorized by the Macon Act. At no time did President Madison encroach upon the war powers of Congress. At no time did he make any statement, public or private, that would tend to control the action of the legislature.

Also in 1810, President Madison sent the United States Army into the Spanish province of West Florida, in support of an independence uprising by American and Spanish settlers who, by pre-arrangement of their leaders with the President, seized power and promptly applied for incorporation of the territory in the United States. The action was taken during the recess of Congress and was unknown to the public until Congress reconvened two months later. The territory thus occupied was held by the United States until formally ceded by Spain in 1819.

Rumors about this coup were flying but actual events were undisclosed when Madison commented to Jefferson about presumably *prospective* actions *already* taken. Following publication by a Georgetown newspaper of a rumor "that our cabinet is seriously engaged in discussing the propriety of taking possession of West Florida," Madison wrote that the crisis in that province had "come home" to American feelings and interests:

"It presents at the same time serious questions as to the authority of the Executive, and the adequacy of the existing laws of the United States for territorial administration. And the near approach of Congress might subject any intermediate interposition of the Executive to the charge of being premature and disrespectful, if not of being illegal. Still there is great weight in the considerations that the country to the Perdido, being our own, may be fairly taken possession of, if it can be done without violence; above all, if there be danger of its passing into the hands of a third and dangerous party."

The words *"being our own"* reflected the claim by the United States that the Louisiana Purchase extended east of New Orleans to the Perdido River. The military move could be (and was) executed "without violence" because no Spanish troops were within reach. The seizure had a measure of congressional authority: Congress in 1804 passed an act adding this part of West Florida to the New Orleans custom district, although that action had never been implemented. "Passing into the hands of a third and dangerous party" referred to the fact that Spain was an Anglo-French battleground on which England and France maintained rival puppet kings.

The action taken was saved from being imperialist aggression, in American eyes, only by the fact that the area involved was regarded (with good reason) to be included in the "Louisiana" retroceded by Spain to France in 1800 and ceded by France to the United States in 1803. The absence of violence prevented infringement of the war powers of Congress. That condition was fortuitous, but Madison's citation of it was meaningful. He disavowed presidential power to take possession of territory claimed as American, by acts of violence, without congressional authorization.

As British domination over Spain increased, apprehension increased that England would occupy East Florida. On January 3, 1811, President Madison sent a secret mesage to Congress asking for authority to take temporary possession of East Florida by military force, provided such occupation had the sanction of the local authority or to forestall a foreign seizure. Congress passed the measure, minus the word "temporary."

The President gave General George Mathews, former governor of Georgia, authority to accept possession of East Florida if it should be amicably offered by the Spanish governor or "the existing local authority." Not content with soliciting such an offer, Mathews organized an invasion force of two hundred Georgia militiamen and adventurers, obtained American naval support by misstating his instructions, over-awed a Spanish garrison and took armed possession as far as the St. John's River.

President Madison repudiated Mathews' action and removed him from office. Under no circumstances, the general was told, "was it the policy of the law, or purpose of the Executive, to wrest the province forcibly from Spain." However, Spain's governmental collapse and the menace of British occupation during the War of 1812 kept the territory in American possession until both Floridas were ceded by Spain as compensation for commercial depredations at sea.

Madison's repudiation of the Mathews adventure eliminated any suggestion of executive intrusion into the war-making powers of Congress. So did the history of West Florida as a territory to which the United States claimed title by purchase from France and was so treated by act of Congress in 1804.

Far from usurping the war powers of Congress, President Madison denied the constitutional power of Congress to delegate war-making decisions to the Executive. This was attempted in 1810, as a means of combating depredations of the British and French navies on American commerce.

In April, 1810, the House of Representatives had before it a bill, favored by Madison, to levy an additional 50 per cent duty on all

British and French goods, to be suspended in favor of either country that would repeal its hostile edicts. However, the House struck out the tax clause and took up a resolution already approved by the Senate:

"That the President of the United States be and hereby is, authorized to employ the public armed vessels in protecting the commerce of the U.S., and to issue instructions which shall be conformable to the laws and usages of nations, for the government of the ships which may be employed in that service."

President Madison regarded that resolution as unconstitutional. Approval of it by the Senate, he commented to Jefferson, marked the "unhinged state" of things in that body, whose future course was "rendered utterly uncertain by the policy which seems to prevail in that branch." (It was ruled by a bi-partisan alliance of Federalists and dissident Republicans.) In the House, the fight against it was taken up by Representative John G. Jackson, Dolley Madison's brother-in-law and recognized spokesman of the President, lately recovered from an almost fatal wound incurred in a duel precipitated by his ardent devotion to Madison. The whole House knew that although the words were Jackson's, the thoughts came from the President. As recorded in the *Annals*, April 30, 1810:

"Mr. J. G. Jackson said it appeared to him that no proposition had ever been submitted by one branch of the Legislature to the other similar to the one now before the House. It contains two propositions, neither of which could be supported.

"The first, said Mr. J., is that the President shall be authorized, when he may deem it expedient, to employ the armed vessels of the U.S. in the protection of commerce. If it be expedient to protect commerce, let Congress say so; let them declare it expedient and then devolve on the President power to carry their acts into execution. It seems to me with equal constitutionality we might refer to the President the authority of declaring war, levying taxes, or of doing everything which the Constitution points out as the duty of Congress.

"All legislative power is by the Constitution vested in Congress. They cannot transfer it. I admit, that the President is a component part of the Legislative; but you can no more transfer to him the power belonging to us, than you can transfer your power to the other branch of the Legislature, and permit them to sit during the recess."

The mind of Madison was equally evident when Jackson turned to the other feature of the resolution, requiring that actions by the President to protect Congress be in accord with international law:

"But this power thus given, is to be exercised according to the law of nations. It is a very important power, in the exercise of which we may and most probably shall come in collision with the definition of other nations and thus be brought into war—and I ask, sir, are you willing to confine this definition to any department of the government? It is a legislative power, which we cannot transfer; and if we could, it would be inexpedient to do so. Why are we assembled here, if, when it becomes our duty to decide on our great relations with foreign nations, we shrink from the task and throw the responsibility of measures on other departments of the Government?"

Madison had expressed the same thought about the law of nations, to Jefferson, on April 1, 1798. Six other congressmen made unrecorded speeches against the resolution. Not a voice was raised in support of it or against the Madison–Jackson reasoning. The measure was defeated 17 to 70.

Both in precept and practice James Madison, the man who divided the warmaking power by giving the President authority to repel sudden attacks, consistently denied executive power to carry the country into any other form of undeclared war. He denied the power of Congress to authorize the President to initiate such hostilities at his discretion. He denied that, either historically or constitutionally, decisions of war or peace were even partly executive in nature. He denied the constitutional power of the Executive, by words or actions, to reduce the freedom of Congress to choose between war and peace. Speaking through Representative Jackson, he disclaimed the constitutional power of Congress to invest the President with discretionary authority to employ the armed forces in hostile activities. And Congress, in his opinion, had exclusive power to define international law, in all situations where the use of armed force was potentially involved.

These positions taken by "the father of the Constitution" were uniformly upheld at the time by Congress and public opinion. In 1793 he overwhelmed the contrary position of Alexander Hamilton, who fled the field without replying to Madison's constitutional arguments. President Washington sustained Madison's view and the House of Representatives ratified it in words written by Madison. In 1810 the House lopsidedly supported the contention, emanating from Madison, that Congress had no power to confer discretionary authority on the President to defend commerce by armed force. The resolution thus treated as unconstitutional was a precise counterpart of the once-famous, later-infamous, Gulf of Tonkin Resolution.

But what a vast spread has since developed between the congressional attitudes and even the constitutional issues in the two instances! In 1810 the prevailing view was that Congress had no constitutional power to invest the President with warmaking authority. In the Johnson-Nixon era, the dispute has centered on the question, did Congress intend to confer such power, or have two Presidents seized more power than Congress thought it was conveying? And both of these Presidents have claimed inherent power to conduct an undeclared war of unlimited magnitude, titanic cost and hundreds of thousands of casualties, without any congressional authorization whatsoever.

In the last twenty-two years, under three Presidents, more than 100,000 American boys have been killed in two undeclared wars which, by the prevailing views of Congress and Presidents in the first twenty-two years under the Constitution, the President had no lawful power to commence or conduct. The second and worse of these wars—a political and moral national monstrosity—is still in progress, four years after Richard Nixon said he had a secret plan to end it.

How much longer will this insanity continue? What is needed to end it and prevent its repetition? Nothing except simple obedience to the Constitution by the President and the Congress of the United States. The Javits Bill, S. 2956, is a mighty step in that direction.

Yours sincerely,

IRVING BRANT.

Mr. BROCK. Mr. President, I have long been a proponent of the concept embodied in this proposed legislation. We need a war powers bill because we clearly need today a specifically detailed understanding of the respective responsibilities of Congress and the Executive when American fighting men are committed to action. The objective—to prevent us from ever again slipping into a war without national debate and congressional action.

This is a meritorious goal, one worthy of such study and debate as may be necessary to guarantee that it meets its stated objectives without jeopardizing a constitutionally defined fulcrum between the executive and congressional branches.

Two decades ago, there was another bill of similar constitutional importance—the Bricker amendment. I will not debate the merits of that legislation, but I will say that the legislators had time to assess fully the constitutional and strategic implications of the bill. The pros and cons of the Bricker amendment were debated in forums across the entire Nation. It became the leading issue before the American Bar Associations. Resolutions for and against were voted by national organizations. It was a formal debate topic on college campuses. Every eminent international lawyer or constitutional professor submitted his opinion. Have we done as well on the war powers bill?

It is true that I find the amended version now before us appealing. Yet while I could support it, I find no crisis so compelling that I cannot wait 6 weeks to be sure all sides have adequate opportunity to be heard.

Here, when the issues raised broadly affect our national security, there are those who act as if passage of this legislation is so pressing that we should dispense with hearing the opinions of the leading lawyers of this Nation. While agreeing with the need for passage of language to clarify war powers authority, I am not so arrogant of my own wisdom as to deny the need of the best advice I can find on this matter.

Mr. President, here is a list of many eminent lawyers who wish to give their views on this war powers bill—they include statesmen of both Democratic and Republican persuasion, international lawyers as well as constitutional authorities, leaders of the organized bar as well as academic spokesmen. I am referring to former Attorney General Herbert Brownell, and former Under Secretary of State, George Ball; two former Presidents of the American Bar Association, David F. Maxwell and Bernard G. Segal; international lawyers of renown such as Arthur H. Dean, and Eberhard P. Deutsch, distinguished professors, such as, Gordon Baldwin of the University of Wisconsin Law School, John N. Moore of the University of Virginia Law School, Carl Christol, of University of Southern California Law School, Louis Sohn of the Harvard Law School, and in addition Prof. Arthur Schlesinger.

I could go on and list many more distinguished leaders of the law profession, such as Monroe Leigh here in Washington; Herman Phleger, in San Francisco; and Edward J. Lawler, of my own State of Tennessee.

All of these experts have expressed concerns about the constitutional implications of this war powers bill. All want to clarify the effect of legislation changing the constitutional relationships between Congress and the President. None, I am sure, seek to thwart the here stated objective of definition of constitutional responsibility.

Mr. President, this Chamber is a deliberative body, proud of its heritage of considering legislation in an educational instead of emotional atmosphere, with the objectivity of facts instead of the subjectivity of feeling.

If a majority today refuses to hear the counsel of these experts in constitutional law, we run a high risk of placing some future President in a situation where he is unable to respond for the protection of the Nation. Mr. President, I will support the move to return S. 2956 to the Judiciary Committee for a specific and short time only, so that we may have the benefit of the important testimony of the best and most experienced legal minds available. To the extent that their advice can further refine and improve our efforts, it should be allowed to do so. At that time, I will actively support this much needed resolution.

Mr. JAVITS. Mr. President, unless some other Senator wishes to be recognized, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF SENATOR BUCKLEY TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, immediately after the two leaders have been recognized under the standing order, the distinguished Senator from New York (Mr. BUCKLEY) be recognized for not to exceed 15 minutes.

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

AUTHORIZATION FOR THE COMMITTEE ON LABOR AND PUBLIC WELFARE TO HAVE UNTIL MIDNIGHT TONIGHT TO FILE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare may have until midnight tonight to file committee reports.

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

AUTHORIZATION FOR MINORITY MEMBERS OF THE COMMITTEE ON COMMERCE TO HAVE UNTIL MIDNIGHT ON WEDNESDAY NEXT TO FILE THEIR VIEWS ON S. 3419

Mr. DOMINICK. Mr. President, at the request of the Senator from New Hampshire (Mr. COTTON), I ask unanimous consent that the minority members of the Committee on Commerce be given until midnight on Wednesday next to file their views on S. 3419. This is merely an extension of time from midnight tonight until Wednesday night, April 12.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

QUORUM CALL

Mr. DOMINICK. 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 (Mr. BROCK). Without objection, it is so ordered.

(The remarks of Mr. Hruska made at this point on the introduction of S. 3470 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

GUILTY UNLESS PROVEN INNOCENT?

Mr. HRUSKA. Mr. President, for the past 6 weeks, this Nation's newspapers have been filled with news stories and editorials critical of the administration, and in particular the Department of Justice, for its settlement of the three ITT antitrust suits. Allegations have been made concerning a "deal" involving ITT's contribution to the San Diego Tourist and Convention Bureau. All of this has taken place in the context of the Senate Judiciary Committee's hearings on the nomination of Richard Kleindienst to be Attorney General.

This trial by publicity has altered the fundamental American jurisprudential precept that a man should be regarded as innocent until proved guilty. Rather Mr. Kleindienst has been portrayed to the public as a man guilty of some unspecified charge based on no creditable evidence whatsoever.

Some Democratic members of the committee have continued to deal in innuendo and suspicion notwithstanding the fact that their efforts have proved entirely unrewarding. Indeed, as time has passed, the name of Mr. Kleindienst has been making less and less frequent appearances in the transcript as the inquisition has ranged far afield. The distinguished Senate majority reader (Mr. MANSFIELD) indicated last week that he felt that Mr. Kleindienst's opponents had failed to make a case against him. This Senator can but echo that sentiment.

Recently, as with all excesses, a turning back to reality and sound judgment has been shown by some editorial writers. Last week the Wall Street Journal published two excellent editorials which put the hearings and the issues in appropriate perspective. In addition Mr. David Lawrence in U.S. News and World Report has perceptively examined the perversion of legal principle I mentioned earlier.

Mr. President, I ask unanimous consent that these three articles be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, the time has come for the Senate to be given the opportunity to vote on the President's choice to be Attorney General. If there is any evidence to impugn Mr. Kleindienst's record it should be brought forth now. If there is no such evidence, and I am confident this is the case, we should be permitted to bring this matter to the floor promptly.

Now the committee has agreed to hold 2 additional weeks of hearings on this nomination. This is altogether too long a time to hold Mr. Kleindienst hostage while Democratic Senators conduct their lengthy and unproductive fishing expedition. For 6 weeks the Democratic nets have been cast wide in hopes of catching some evidence of wrongdoing in order to defeat this nomination and embarrass the administration; for 6 weeks those nets have been hauled in empty. This charade should have been stopped long ago.

There are, however, two important and useful benefits in the agreement reached by the committee last Friday. First, at long last there is a cutoff date agreed upon for these hearings, April 20 is the final day on which hearings can be held; April 27 is the deadline for the majority leader to be informed of the decision of the committee on this nomination. Second, the agreement specifies that the witnesses to come before the committee during these final 2 weeks are to limit their testimony to matters relevant to the nomination. After all, Mr. President, it is Mr. Kleindienst who as been nominated by the President to be Attorney General, not ITT. This Senator intends to make every effort to see that this newly found rule of relevance is strictly observed.

EXHIBIT 1

[From the Wall Street Journal, Apr. 4, 1972]

WHERE NEXT ON ITT?—I

On Thursday the Senate Judiciary Committee will vote on whether to continue its hearings into the ITT affair. We are not at all sure matters ought to be dropped as they stand, but if the hearings are to continue the Committee will have to find some track to get them on.

Presently the hearings' remaining function in life seems to be providing a field day for partisan Democrats anxious to embarrass a Republican administration, and for editorial cartoonists anxious to expand public understanding of complex issues by drawing pictures of dragons and garbage piles. The partisans, at least, are a normal and useful part of the political system. The Republicans would do the same thing if the tables were reversed, and it helps keep everyone reasonably honest.

Still, the day when this justification wears thin comes fairly quickly. It's time to ask what has or has not been proved, and what, specifically, there is left to investigate.

We think certain minimum conclusions are by now evident. The Republican Party ought not to have accepted a $200,000 convention-financing pledge from International Telephone & Telegraph Corp. while it was party to an important antitrust suit. In financing matters neither party is above suspicion, as the Democrats' still-unpaid 1968 bills testify. If the ITT affair warns both parties to look more closely at their contributors, it will have served good purpose. If it warns the next President of either party of the potential damage in the recent tradition of staffing the Justice Department with campaign managers and other highly partisan types, it will have served doubly well.

Further investigation is scarcely needed to establish that much, however, so the Committee will still be left searching for a purpose. Ostensibly, of course, it is inquiring into the qualifications of Attorney General-designate Richard G. Kleindienst. Little in the hearings reflects personally on Mr. Klein-

dienst beyond some not especially earth-shaking dicrepancies between his present account and what he'd said previously responding to a letter from the Democratic National Committee.

It is of course also true that Mr. Kleindienst set up and attended meetings between ITT officials and former antitrust chief Richard W. McLaren. Similar meetings have been standard practice in antitrust cases in previous administrations; in fact something like 80% of all antitrust cases are settled by negotiation rather than trial. The Judiciary Committee might want to invesigate whether such practices should continue, but the case against them will be hard to make, and so far as we know no one has volunteered for that task.

It would of course bear on Mr. Kleindienst's qualifications if a link could be demonstrated between the convention contribution and the antitrust settlement. In all of the hearings, though, the only suggestion of a link has been in the disputed memorandum by ITT lobbyist Dita D. Beard.

The facts behind the memorandum are far from established, but as a practical matter we see no promising path for investigating it further. Additional questioning of Mrs. Beard does not seem especially promising, even laying aside her health problems. Columnist Jack Anderson, who first revealed the disputed memo, naturally refuses to reveal his source. While we fully support his refusal, it obviously does block an alternate path for investigating the memo.

As against the memo, you have the explanation of the antitrust settlement by Mr. McLaren and Solicitor General Erwin Griswold. The record, after all, is this: The previous Democratic administration did not believe the antitrust laws applied to conglomerate mergers, and did almost nothing about them. Mr. McLaren started to test legal theories making the application, and the results were not encouraging. In the lower courts he lost two of the ITT cases outright and suffered a sharp setback in the third.

Whereupon Mr. McLaren settled the ITT cases by consent decree. The net result is that while the previous administration's tactics would have won nothing, Mr. McLaren got the biggest divestiture in history, a promise to take ITT out of the acquisition business for 10 years and an example that did help deter the conglomerate movement. This does not sound to us like the record of an administration that sold out, and it will take rather more than the Beard-Anderson memo to persuade us otherwise.

A number of other questionable aspects of the case come quickly to mind, of course, but each of them reflects not on the government but on ITT. Here may be a promising track for further investigation, provided the Committee can frame its work not as a random assault on one company but in terms of broader social purpose. We intend to return to this point later.

But unless there are further disclosures to connect the contribution pledge to the antitrust settlement, it seems to us the Committee ought to wind up the Kleindienst phase of its hearings, continuing them, if at all, in some clearer context.

[From the Wall Street Journal, April 5, 1972]

WHERE NEXT ON ITT?—II

We've said the investigation into the ITT affairs leaves us reasonably satisfied with the integrity of the antitrust division. But definite clouds still hang over the integrity of International Telephone & Telegraph Corp., and it seems to us there is a question about what kind of corporation our economic system ought to encourage.

The episode seems to have established a number of things about ITT. It employed a lobbyist up to things like rushing off to the Kentucky Derby simply to corner the Attorney General. Its crisis reaction was to shred papers.

The reports of stock trading by its insiders show a pattern of buying broken by sales starting the day after the government offered terms for settling its antitrust suits by divestitures. A prospectus it issued a few days before settling the suits makes no mention of the ongoing negotiation. While its tender offer for Hartford Fire Insurance Co. was outstanding, it held a private meeting with selected Wall Street types. Its chief executive now says a previous company statement listing some 20 government officials with whom he had discussed antitrust policy was wrong in including two who are highly pertinent to the present controversy.

Now, we would scarcely charge that any of this was illegal, and ITT has variously plausible explanations for each of its actions. Its pledge to help finance the Republican convention was intended to promote its hotel properties, for example, and the timing of the stock sales was a coincidence. But the accumulation of questions and explanations has piled pretty high. Which is why the chief effect of the latest go-round on ITT, in our minds at least, has been to underline long-standing questions about conglomerate companies as they grew during the last decade.

Here a bit of background is necessary. The gaudy per-share performances that made conglomerates the darling of Wall Street during the 60s market boom were in important respects the result of imaginative, though perfectly legal, accounting practices.

One of the less arcane examples concerned "pooling of interest" accounting for acquisitions. This technique was not used merely by conglomerates but by many companies, and it was and remains a perfectly valid practice in many instances. Indeed, some types of business suffer hardships from the more recent restrictions on the practice.

One of its effects, though, is that an acquiring company can take credit for its acquisition's full-year earnings simply by owning it on the last day of the year. Thus by buying new earnings every year, a conglomerate could show consistent per-share growth even if the performance of its established divisions was mediocre.

The Accounting Principles Board, which sets the rules for the accounting profession, remarked on "instant earnings" and on "companies that have been able to show rising profits year after year by a series of mergers." In 1970, after considerable controversy, the Board changed its rules to discourage "pooling of interest" and otherwise tightened the practices from which conglomerates had benefited. Along with the market decline and the administration's antitrust suits, this has taken the steam out of the conglomerate movement, at least for the time being.

Unlike most conglomerates, ITT has been able to continue its earnings growth even after the acquisition pace slowed, and thus has avoided many of the doubts that have enveloped the movement in general. Yet there is little question it profited from the accounting game. Indeed, an academic study placed it among the six Big Board companies that profited most from pooling-of-interest accounting during 1967. Its controller, Herbert C. Knortz, was one of the most outspoken opponents of the changes the Accounting Principles Board enacted.

So the latest disclosures seem once again to raise questions about the methods of the type of corporate management attracted into the conglomerate game. Are they the type of men we want controlling an increasing share of American business, or would we prefer business leaders of a more conservative character?

The question may be academic, since the conglomerate movement is no longer sweeping American business. And we certainly do not need antitrust laws that bar all acquisitions or diversification, which make sound business sense in many cases. Our antitrust enforcers still have to learn, in fact, that bigness is not in itself a sin, or even a drag on competition.

Even so, we would like to be sure that conglomerates as we knew them in the 60s do not take off again the next time the stock market booms. So if the Senate Judiciary Committee wants to continue its investigations, it would do worse than to take some time to make sure there's nothing artificial in the laws or the economy to promote acquisition for the sake of acquisition, let alone for the sake of fancy accounting.

[From the U.S. News & World Report, Apr. 10, 1972]

GUILTY UNLESS PROVED INNOCENT?

(By David Lawrence)

Under English and American common law as well as centuries of legal reasoning, the principle has been recognized that a person accused of crime is presumed to be innocent until he is found guilty "beyond a reasonable doubt." The Supreme Court has ruled that the "due process" clause of our Constitution requires this standard to be observed.

Today in America the newspapers are filled with muckraking stories about the alleged wrongdoings of individuals or companies. The innuendoes are constantly repeated in the press and on radio and television so that citizens become convinced that the accused are guilty. Many of those who are the victims of attack are prominent in public life. The charges made against them are not necessarily removable by denials. Thus, the insinuations continue to be spread and are especially harmful during political campaigns when accusations are directed against candidates for office.

The idea of making sensational charges is defended as a way of attracting readers or listeners and as a custom that has been carried on over the years. Protection for the individual whose reputation is damaged lies in the use of libel laws. But by the time a controversy has been given the headlines and an aspirant to public office has been hurt in his chances for election, not much help can come from a subsequent suit for damages. Also, court decisions have put limits on situations in which such claims can be sustained.

Government officials have been astonished in recent years by the theft of papers not only from public but from private files and the distribution of their contents to newspapers. Efforts to prevent publication have been turned down by the courts under the doctrine of "freedom of the press."

The public, of course, often gets a one-sided story because the stolen documents do not cover the entire history of an event or series of events which are the subject of the exposure. Congressional committees can make thorough inquiries in cases involving public officials, but it isn't always possible to get all the facts or all the evidence necessary for a fair conclusion to be reached.

Under the circumstances, therefore, will individuals who are being accused of impropriety be regarded as guilty just because there is not available immediately a means of proving their innocence? The rule of law says they are innocent until proved guilty. But nowadays it is the other way around. They are thought of as guilty because they have not been proved innocent.

Many controversies arise over political contributions. The law is specific in stating that neither corporations nor labor unions can contribute from their own funds to a political party or candidate for federal office, but money is nevertheless supplied by them indirectly. One method is to organize separate committees which canvass the personnel of companies or labor unions and raise considerable amounts. The net result is that huge sums are collected from persons actively

engaged in business or identified with national unions.

There has been much talk in Congress about modifying the laws so that these devices for collecting campaign funds would not be permitted, but nothing has been done about it. As a matter of fact, both political parties benefit by the flow of money from all kinds of groups during a presidential campaign. The contributions vary in size, but each of the major parties amasses millions of dollars to pay expenses of the contest. If the laws were literally interpreted, there might be some question about circumvention of statutes. Since both parties are involved in soliciting money from private sources, however, no real effort has been made to prevent the gathering of large amounts from individuals in both labor and management categories.

During the coming campaign, there will be plenty of charges and countercharges. Lots of this will be done on television, and people will hear allegations about different events in which candidates have participated or with which they have been associated. Those accused will not be present to make a rebuttal, and hence an incorrect impression can be given the public.

The most conspicuous example of failure to apply the simple rule of justice to the many controversies in politics is in the charges often made against the candidates of an incumbent Administration. Because it is involved in a wide range of governmental services, its leaders are particularly vulnerable.

The assumption is that an accusation which implies wrongdoing is permissible whether or not all the facts are revealed. As long as the innuendoes are spread, the purpose is served. This is the polemics of politics.

So we come back to the simple rule of justice. Shouldn't a person be considered innocent until he is proved guilty "beyond a reasonable doubt"? Or is he going to be regarded as guilty because of reports in the press or on the air raising suspicions related to activities in which he may or may not have played a part?

The view currently prevalent seems to be: Guilty Unless Proved Innocent.

UNANIMOUS-CONSENT AGREEMENT

Mr. HRUSKA. Mr. President, I have a unanimous-consent request to make with reference to the pending motion to refer the pending measure, S. 2956, the proposed War Powers Act, to the Committee on the Judiciary.

I am prompted somewhat by the suggestion that a reference to that committee might be consigning the bill to the graveyard. If all the allegations having to do with the graveyard regarding a referral to the Committee on the Judiciary were true, that graveyard would not have any room for another grave. At any rate, there have been assurances by this Senator that the measure would not be referred to the Committee on the Judiciary for the purpose of burying it. In order to make that assurance complete, tangible, and irrevocable, my unanimous-consent request is that the reference to the Committee on the Judiciary of S. 2956 be for a period of not to exceed 45 days.

That may seem to be a little long. However, I just finished detailing to the Senate that the next 2 weeks will be occupied with an ongoing issue which is already washed out and somewhat outworn. Nevertheless, additional hearings on the nomination of Mr. Kleindeinst will be held. That would mean a residual period of 30 days for the purpose of canvassing the constitutional features of S. 2956 and hopefully to obtain some of the leading constitutional lawyers to testify on this bill and its proposals.

It must be said again that only two constitutional lawyers have testified so far in these hearings. One was Professor Bickel of Yale Law School. The other was Prof. John Norton Moore, of the University of Virginia Law School. It is imperative that we have more constitutional lawyers, not professors of history, not professors of political science, but constitutional lawyers testify.

In our colloquy on Friday the Senator from Arizona and I listed a number of them. To that list I would like to add the name of Myres S. McDougal.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a biographical sketch of Prof. Myres S. McDougal.

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

MYRES S. MCDOUGAL

Born November 23, 1906 Mississippi.
A.B., A.M., LL.B., University of Miss. 1927.
B.A., B.C.L., Oxford, England, 1930.
J.S.D., Yale, 1931.
Honorary Doctor of Humane Letters, Columbia, 1954.
Honorary Doctor of Laws, Northwestern, 1956.
Assistant Professor Law, Univ. of Illinois, 1931–34.
Associate Professor of Law, Yale, 1934–39.
Professor of Law, Yale, 1939–
Currently Sterling Professor of Law, Yale, 1958–present.
Visiting Professor, Cairo Univ., U.A.R., 1959–60.
Lecturer, Fulbright Conference on American Studies, Cambridge Univ., England, 1952.
1942 Attorney and Assistant General Counsel, Lend Lease Administration.
1943 General Counsel, Office of Foreign Relief and Rehabilitation Operations, Dept. of State.
Since 1963 member, U.S. Panel, Permanent Court of Arbitration, The Hague.
1966 President, Association of American Law Schools.
1958 President, American Society of International Law.
Many publications in field of congressional-executive powers under constitution.

Mr. HRUSKA. Mr. President, Professor McDougal in a conversation over the phone with my legislative assistant, Stanley Ebner, authorized him to make a statement on his behalf which will be verified in writing.

In that statement Professor McDougal takes a position against the pending bill.

Here is the substance of his statement as taken over the phone by Mr. Ebner:

The report of the Foreign Relations Committee on S. 2956 is hopelessly inadequate regarding the grave constitutional questions raised by this bill.

Under the power to declare war the Congress has no more competence to restrict the President's power as Commander in Chief than the President has as Commander in Chief to limit the Congress' authority under the declaration of war clause.

The President's competency in relation to foreign affairs, his ability regarding the making of agreements and the use of force, is of critical importance here.

With this bill the Congress would be telling the President what he can do in areas where he either may act alone, or act together with Congress. S. 2956 is a real threat to the security of Freedom under the established separation of powers. It threatens the Presidency as a co-equal branch.

Professor Rostow is 100% correct in his view on the bill—he should be supported.

Mr. President, the reference to Professor Rostow was twofold. One was his participation in the debate last October at the Yale University with Prof. Alex Bickel. That was the subject of a Yale Law Report article which is to be found earlier in the record of this debate.

The second reference to Professor Rostow had to do with the article he had in the New York Times of Thursday, last.

Mr. JAVITS. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. HRUSKA. I yield.

Mr. JAVITS. Mr. President, I did not hear the Chair rule on the unanimous-consent request.

Mr. HRUSKA. I have not quite finished my statement.

Mr. JAVITS. I am sorry. I wanted to be sure that I was not pre-empted.

Mr. HRUSKA. Mr. President, when I finish, I will give the Senator an opportunity to respond.

I detailed the matter dealing with Professor McDougal because it is in addition to the list of names given to the Senate in the colloquy between the Senator from Arizona and this Senator.

I want to finish that before I repeat my unanimous-consent request and ask for a ruling on it.

Professor McDougal authorized Mr. Ebner to say that if the hearings are held, or if they are not, and there are any other occasions on which he can submit his testimony either orally or in writing, we should let him know and he would do his best to oblige.

Mr. President, I ask unanimous consent that permission be given me to modify my motion to refer this bill S. 2956, to the Committee on the Judiciary with the addition of this language—"for a period not to exceed 45 days from the date of adoption."

Mr. JAVITS. Mr. President, reserving the right to object, and I shall not object, I do wish to make an observation and I wish to suggest an amendment to the way in which the unanimous-consent request is put.

Mr. President, as to the latter, it is procedural. I am sure that the Senator has no objection to it. It seems to me that the unanimous-consent request should provide that the bill shall then be deemed reported by the Judiciary Committee to the Senate at the end of that 45-day period. Otherwise other proceedings might have to ensue, and I do not think the Senator has that intention.

Mr. HRUSKA. Mr. President, I have no wish to that. I have no objection. Does the Senator suggest that this be added?

Mr. JAVITS. I do.

Mr. HRUSKA. I would be happy to agree to the addition of such language. There is no objection to that at all.

Mr. JAVITS. I did not think the Senator had.

Mr. President, reserving the right to object further, and again I repeat that I shall not object, I wish to make an observation.

Mr. President. I do not think the spon-

sors of this bill desire in any way to deal with the question of referral to the Judiciary Committee except substantively. So, it is not material if the reference is for 1½ months, although we will reserve the right to argue as to the state of the calendar and the situation in Congress at the end of that time. However, we will base our main objection to the reference on the substantive ground that first, there is no question which is of a nature that gives the Judiciary Committee jurisdiction; and second, the delay in time which is inherent in the motion is not warranted.

I did wish, because of the Senator's statement, to couple our major points of opposition with his unanimous-consent request.

I do not have any objection. I have consulted with the Senator from Mississippi (Mr. STENNIS), the Senator from Virginia (Mr. SPONG), and other Senators concerned. There is no objection.

Mr. HRUSKA. I am thankful for the last suggestion of the Senator from New York. This Senator, before he decided to make this unanimous-consent request, did canvass the leadership on both sides and those Senators most active in the debate on this bill.

Mr. ROBERT C. BYRD. I was going to inquire whether or not the matter had been cleared with the distinguished Senator from Virginia (Mr. SPONG), the manager of the bill on this side of the aisle, and the Senator from Mississippi (Mr. STENNIS). I understand now, based on the statements by the Senator from New York and the Senator from Nebraska, that that matter has been clarified. I have no objection.

Mr. HRUSKA. Mr. President, I would like to add that I discussed the request with the Senator from Arizona (Mr. GOLDWATER), the two Senators from Colorado, and other interested Senators on our side of the aisle.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HRUSKA. Mr. President, earlier in this debate I have stated that the proposed War Powers Act has grave constitutional implications. While the Judiciary Committee should be given the fullest opportunity to examine and study these issues, mention of a few of them at this time may perhaps provide further impetus in support of the motion to refer the bill to committee.

The proponents of this bill have asserted time and again that S. 2956 takes nothing away from the constitutional authority of the President regarding his ability to commit military forces around the globe. This is merely stating a conclusion, however, which naturally depends on what powers one believes are provided the President by the Constitution in the first instance.

Let us look at the sections containing the 30-day limitations, sections 5 and 6 of the bill. These sections provided, in the version reported by the Foreign Relations Committee, that Congress must approve the use of American Armed Forces for more than 30 days in any situation where the President commits them on his own—under those circumstances allowed by the bill, of course. These sections also authorized Congress to terminate such use sooner than 30 days through legislation.

Since the debate on this bill has commenced on the Senate floor, the sponsors of S. 2956 have introduced so-called "perfecting amendments" which were adopted by the Senate on April 5. As amended, sections 5 and 6 now ostensibly permit the President to go beyond the 30-day limit without congressional intervention if he certifies to Congress in writing that troops must continue to be used to bring about a prompt disengagement from hostilities. This authority is limited to situations tied to the safety of our Armed Forces, and then only when they have been committed in cases involving attacks on the United States or on our Armed Forces outside the United States.

Prof. Quincy Wright, who has been a foremost scholar of international law for many years, had the following to say as long ago as 1920:

> The powers of the Commander in Chief extend to the conduct of all military operations in time of peace and of war, thus embracing control of the disposition of troops, the direction of vessels of war and the planning and execution of campaigns, and are exclusive and independent of Congressional power.

After the opportunity to further study and to reflect on this issue for almost 50 years, the same Professor Wright wrote in 1969:

> I conclude that the Constitution and practice under it have given the President, as Commander-in-Chief and conductor of foreign policy, legal authority to send the armed forces abroad; to recognize foreign states, governments, belligerency, and aggression against the United States or a foreign state; to conduct foreign policy in a way to invite foreign hostilities; and even to make commitments which may require the future use of force. By the exercise of these powers he may nullify the theoretically, exclusive power of Congress to declare war.

Mr. President, this is not the view of an immoderate man who does not know whereof he speaks. Neither is it a lone voice in the wilderness. There are other distinguished scholars who share this view—just how many and to what extent we cannot be sure until they have an opportunity to present their arguments before the Judiciary Committee, if the pending motion is approved.

The Senator from Arizona and this Senator have already listed a number of such experts earlier in this debate.

This position, of course, argues most strongly against the provisions of sections 5 and 6 of S. 2956—and against those who claim this bill does not impinge upon the constitutional powers of the President. How can it be argued seriously that the President must bow to the will of Congress according to the time sequences spelled out in the bill if he has the power to commit the troops in the first instance?

If this power derives direct from the Constitution, to attempt to do it in the manner of S. 2956 would be an attempt to modify and amend the Constitution by statute. We have not reached that point. Hopefully we never will.

I am well aware that some supporters of this proposal theorize that a brief hostility does not amount to a "war" within the meaning of article I, section 8 of the Constitution—but that a lengthy conflict does come within this definition. Precedent at least does not bear out this theory. This Senator has already mentioned that there have been 192 instances in our history when American military forces have been involved in hostilities abroad without a declaration of war. Of particular significance to the legality of sections 5 and 6, however, is the fact that there have been 93 of these military actions lasting more than 30 days.

Examined in this light, Mr. President, the floor amendments to sections 5 and 6 of the bill are little more than cosmetic. They do not alter the basic flaws in any scheme, pattern, or device which would attempt to place time limits, conditions, reporting requirements, and the like on the constitutional powers of the President as Commander in Chief and principal exponent of American foreign policy. They merely appear to make the bill more palatable to those who have legitimate objections to S. 2956 on policy grounds.

In a previous statement this Senator mentioned the case of *United States* v. *Midwest Oil Co.*, 236 U.S. 459 (1915), as one cited by this bill's proponents to support the authority of Congress to provide statutory limitations on the President's ability to commit troops overseas. This case is indeed worth examining closely, but not for the purpose suggested by those who wish to see the enactment of S. 2956.

In writing for the majority, Justice Lamar stated:

> It may be argued that while these facts and rulings prove a usage they do not establish its validity. But government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long-continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itsef—even when the validity of the practice is the subject of investigation.

Mr. President. it would be tragic if S. 2956, which represents such a serious departure from accepted separation of powers principles in this area, should be allowed to slip through the fingers of the Senate without additional exploration on constitutional grounds. The brooding presence of the Vietnam conflict must not be permitted to obscure either our past legal tradition or our future dependence on the Constitution as the single most powerful force in preserving the American system of government. Additional consideration of S. 2956 before the Judiciary Committee is urgently needed if the Senate is to have the best possible examination made of a measure which flies in the face of nearly 200 years of practice and thinking under the Constitution.

Mr. President, there will be a vote on the motion to refer S. 2956 to the Judiciary Committee at 2 p.m., on tomorrow. I hope that all Senators will examine the debate record of the past few days and consider carefully the unresolved and most serious questions contained in this bill before casting their votes on the motion.

I yield the floor.

Mr. JAVITS. Mr. President, the debate today has dealt so extensively, almost exclusively, with the question of reference to the Judiciary Committee, I would like to reinforce an argument made earlier in the day.

The argument is based upon the fine statement, the vigorous statement, of the Senator from Mississippi (Mr. STENNIS) and the immediately subsequent statement of the Senator from Virginia (Mr. SPONG). It led me to identify the motion with the proposition that we were going to vote tomorrow, not on an adjective question of procedure but on a substantive question, and on this substantive question the Senate should be decidedly and decisively against the motion.

The substantive question is this: As the jurisdiction of the Judiciary Committee extends to amendments to the Constitution, the motion to refer to the Judiciary Committee by the makers of the motion is made on the ground that it presents a constitutional question. As has been properly stated time and time again, we have constitutional questions involved in a water pollution bill or in an air pollution bill or in a civil rights bill, or in the question of equal opportunity under the 14th amendment, or taking property without due process of law, and many other constitutional questions. We would never think of referring such legislation to the Judiciary Committee. If we did, that committee would have referred to it every bill in the place. Everything we do here flows from the powers given to the Congress under the Constitution.

So we expressly rebut the contention of the movants of the motion that what is presented is a constitutional amendment and that what is sought to be achieved is a constitutional change. We believe the total evidence and the total history before the Senate rejects that. It is not a question of changing the Constitution.

The question is that of adopting a methodology under which the constitutional powers of the Congress and of the President may be exercised in view of historical developments. The reaction of the President to a sudden attack in the exercise of his power as Commander in Chief, may very speedily become war.

We do not want these questions fuzzed up with the question of appropriations for operations and men in the field, with all the questions that entails, and the responsibility for our Armed Forces, which naturally Congress is very reluctant to do, and which, if one House decides to do, the other House would not, just as we have experienced before.

Those who believe we are really legislating a constitutional amendment will vote with those who are seeking to send the bill to the Judiciary Committee, but those who feel that we are endeavoring to apply, under the necessary and proper clause, a methodology will vote against it. I hope very much that will be the decisive action of this body.

We will argue tomorrow the fact that referral would bring us right into the middle of the busiest part of the legislative session. The matter has been given broad consideration in the public and private forum, including testimony, for 1 year, with Members of Congress and experts giving full consideration to it, with people at the highest levels, those representing presidents, having testified on both sides of the issue. Those who have served presidents do not agree with some of those views. We have had all the testimony.

We finally come to JOHN STENNIS' proposition, that this is a political issue. Since it involves the lives and fortunes of our people, do we have any less right to seek the concurrence of the Congress with the President when war is involved—not an incident or a repelling of sudden attack, but war on a massive scale we are talking about, shown by the experience we have just gone through?

So I hope Members of the Senate will consider the record. It is very important. My own opinion is that tomorrow's vote is the decisive vote on the whole issue of whether we will or will not have congressional action in this field, and I hope very much the motion will be rejected.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 12 o'clock meridian. After the two leaders have been recognized under the standing order, the distinguished junior Senator from New York (Mr. BUCKLEY) will be recognized for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business, or not to exceed 30 minutes, with statements therein limited to 3 minutes.

At the conclusion of the period for the transaction of routine morning business, the Chair will lay before the Senate the unfinished business, S. 2956, a bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by Congress.

At 2 p.m. tomorrow, the Senate will vote by rollcall on a motion by the distinguished Senator from Nebraska (Mr. HRUSKA) to refer the bill to the Judiciary Committee. Following that yea-and-nay vote, in the event the motion to refer is rejected, amendments will be called up, and rollcall votes thereon are expected.

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

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. I can assure the Senator, because we already have been asked—and I say this only so that Senators or members of their staffs who read the RECORD may be informed—that there will be amendments. From the nature of the amendments, I believe that decisions will be taken on those amendments. Whether or not they will be yea and nay votes, obviously I cannot tell, but I believe so.

So all Senators should be alerted to the fact that not only will there be voting at 2 o'clock, but also that thereafter, for the remainder of the afternoon, it is most likely that a number of amendments will be called up, considered, and acted on.

Mr. ROBERT C. BYRD. I thank the Senator.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and at 4:35 p.m. the Senate adjourned until tomorrow, Tuesday, April 11, 1972, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate, April 10, 1972:

DEPARTMENT OF DEFENSE

John W. Warner, of Virginia, to be Secretary of the Navy, vice John H. Chafee, resigned.

Frank P. Sanders, of Maryland, to be Under Secretary of the Navy, vice John W. Warner, elevated.

PRICE COMMISSION

Mary Hamilton, of Illinois, to be a Member of the Price Commission, vice Marina von Neumann Whitman.

NATIONAL COMMISSION ON MATERIALS POLICY

Peter G. Peterson, of Illinois, to be a Member of the National Commission on Materials Policy, vice Maurice H. Stans.

IN THE ARMY

The following-named persons for appointment in the Regular Army, by transfer in the grade specified, under the provisions of title 10, United States Code, sections 3283 through 3294:

To be captain

Boohar, Charles W., Jr., [redacted]
Carpenter, Bernard R., [redacted]
Craig, David B., [redacted]
Gamboa Anthony H., [redacted]
Gideon, Wendell R., [redacted]
Lehman, William J., [redacted]
Plaut, Peter K., [redacted]
Simmons, Timothy J., [redacted]

To be first lieutenant

Besozzi, Paul C., [redacted]
Bishop, Burk E., [redacted]
Borgen, Mack W., [redacted]
Borek, Theodore B., [redacted]
Carter, Victor S., [redacted]
Caryl, Michael R., [redacted]
Donnelly, Terrence M., [redacted]
Dowell, David R., [redacted]
Eisenberg, Stephen A., [redacted]
Grandison, Wilfred G., [redacted]
Hargus, Patrick K., [redacted]
Hoskins, Harry D., III, [redacted]
House, George W., [redacted]
Knight, Sammys, [redacted]
MacPherson, John R., [redacted]
Miller, Ralph I., [redacted]
Reynolds, George D., [redacted]
Robblee, Paul A., [redacted]
Sauer, John G., [redacted]
Smith, Brian K., [redacted]
Taylor, Vaughn E., [redacted]
Trainor, Charles W., [redacted]
Tucker, Harry A., Jr., [redacted]
Vickery, Arnold A., [redacted]
Williams, Herbert D., III, [redacted]
Wonnell, Donn T., [redacted]
Wzorek, Lawrence E., [redacted]

To be second lieutenant

Lewis, John W., [redacted]
Rovak, Stephen H., [redacted]

The following-named persons for appointment in the Regular Army of the United States, in the grades specified, under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be major

Davis, Alice M., [redacted]
Rohr, Robert E., [redacted]
Shrout, Roy B., Jr., [redacted]

To be captain

Adams, Peggy T., [redacted]
Badgley, Eddie D., [redacted]

Berk, Clarence G., xxx-xx-xxxx.
Breland, Marshall W. Jr., xxx-xx-xxxx.
Brown, Allen W., Jr., xxx-xx-xxxx.
Ceria, Paul K., xxx-xx-xxxx.
Cornine, Lance R., xxx-xx-xxxx.
Cuartas, Francisco I., xxx-xx-xxxx.
Fayard, Marshall J., xxx-xx-xxxx.
Feight, James W., xxx-xx-xxxx.
Foore, Larry L., xxx-xx-xxxx.
Fredrick, Bruce L., xxx-xx-xxxx.
Frierson, George W., xxx-xx-xxxx.
Glick, David D., xxx-xx-xxxx.
Hahn, Robert L., xxx-xx-xxxx.
Hamlette, John J., Jr., xxx-xx-xxxx.
Harvey, Floyd D., xxx-xx-xxxx.
Huston, Mary H., xxx-xx-xxxx.
Johnson, Lewis, xxx-xx-xxxx.
Lindsay, Lawrence F., xxx-xx-xxxx.
Livingstone, Bruce L., xxx-xx-xxxx.
Machado, Joseph A., xxx-xx-xxxx.
McCombs, Willis C., xxx-xx-xxxx.
McLemore, Melvin J., xxx-xx-xxxx.
Miller, Sharon L., xxx-xx-xxxx.
Neiman, Kenneth G., xxx-xx-xxxx.
Onne, Joseph, xxx-xx-xxxx.
Rook, Joseph J., Jr., xxx-xx-xxxx.
Stein, Walter J., Jr., xxx-xx-xxxx.
Tapscott, Donald A., xxx-xx-xxxx.
Wood, William M., xxx-xx-xxxx.

To be first lieutenant

Allen, Richard G., xxx-xx-xxxx.
Angus, James W., Jr., xxx-xx-xxxx.
Auerbach, Steven L., xxx-xx-xxxx.
Bandel, Raymond L., xxx-xx-xxxx.
Barrett, Daniel L., xxx-xx-xxxx.
Bearce, Gerald R., xxx-xx-xxxx.
Bent, Gary D., xxx-xx-xxxx.
Black, John H., xxx-xx-xxxx.
Branch, Gerald D., xxx-xx-xxxx.
Brown, Eric B., xxx-xx-xxxx.
Brown, Thomas P., Jr., xxx-xx-xxxx.
Bunch, Ronald C., xxx-xx-xxxx.
Burrell, Ralph, xxx-xx-xxxx.
Bushong, Richard H., xxx-xx-xxxx.
Butler, William W., xxx-xx-xxxx.
Childs, Edward M., xxx-xx-xxxx.
Clemens, Judd L., xxx-xx-xxxx.
Conway, Jack D., xxx-xx-xxxx.
Cook, James T., xxx-xx-xxxx.
Collins, William P., xxx-xx-xxxx.
Costello, Joseph A., Jr., xxx-xx-xxxx.
Cox, Everett F., xxx-xx-xxxx.
Craig, Larry B., xxx-xx-xxxx.
Cronin, Daniel F., xxx-xx-xxxx.
Culley, William F., Jr., xxx-xx-x...
Cummings, Charles G., xxx-xx-xxxx.
Daniels, Jerry W., xxx-xx-xxxx.
Deery, Patrick D., xxx-xx-xxxx.
Densberger, William J., xxx-xx-xxxx.
Devine, Frank E., xxx-xx-xxxx.
Dingbaum, Herbert H., xxx-xx-xxxx.
Elders, James F., xxx-xx-xxxx.
Engel, Joseph J., xxx-xx-xxxx.
Esposito, Anthony L., xxx-xx-xxxx.
Ford, Carl W., Jr., xxx-xx-xxxx.
Fortenberry, Cleveland, xxx-xx-xxxx.
Fouts, Leroy K., Jr., xxx-xx-xxxx.
Franson, David C., xxx-xx-xxxx.
Fusco, Robert A., xxx-xx-xxxx.
Gardner, Mary K., xxx-xx-xxxx.
Gattis, Thomas T., xxx-xx-xxxx.
Gehm, Laverne J., xxx-xx-xxxx.
Geloso, Peter J., xxx-xx-xxxx.
Gooding, Thomas L., xxx-xx-xxxx.
Gordon, William N., xxx-xx-xxxx.
Grimm, Michael C., xxx-xx-xxxx.
Hall, William K., xxx-xx-xxxx.
Hamre, Larry H., xxx-xx-xxxx.
Hancock, Dexter V., xxx-xx-x...
Hart, Louis H., xxx-xx-xxxx.
Hawks, Steve E., xxx-xx-xxxx.
Higgins, John A., xxx-xx-xxxx.
Howes, Alfred Jr., xxx-xx-xxxx.
Ireland, James W., Jr., xxx-xx-xxxx.
James, Kenneth D., xxx-xx-xxxx.
Johnson, Nicki L., xxx-xx-xxxx.
Jordan, Samuel Jr., xxx-xx-xxxx.
Kawakami, Clyde K., xxx-xx-xxxx.
Kernodle, Joseph W., xxx-xx-xxxx.
Kirk, Johnny L., xxx-xx-xxxx.
Koehler, Walter L., xxx-xx-xxxx.
Langone, William J., xxx-xx-xxxx.
Lawson, Marvin A., xxx-xx-xxxx.
Lynch, Harold F., xxx-xx-xxxx.
Marks, Virginia L., xxx-xx-xxxx.
McCoy, James P., xxx-xx-xxxx.
McIntyre, Kendall K., xxx-xx-xxxx.
Merritt, William L., xxx-xx-xxxx.
Morgan, David R., xxx-xx-x...
Murnane, Michael J., xxx-xx-xxxx.
Nichols, Dean H., xxx-xx-xxxx.
North, Kenneth T., xxx-xx-xxxx.
Pearson, David W., xxx-xx-xxxx.
Pettit, Ronald B., xxx-xx-xxxx.
Pierce, John W., xxx-xx-xxxx.
Pistana, Robert R., xxx-xx-xxxx.
Pugh, Homer H., Jr., xxx-xx-xxxx.
Quinn, Dennis F., xxx-xx-xxxx.
Ramick, Thomas E., xxx-xx-xxxx.
Raschke, Phillip E., xxx-xx-xxxx.
Renn, Gregory A., xxx-xx-xxxx.
Rexford, Joel E., xxx-xx-xxxx.
Richey, David L., xxx-xx-xxxx.
Roles, Lewis L., xxx-xx-xxxx.
Ross, Glenn S., xxx-xx-xxxx.
Ross, Robert G., Jr., xxx-xx-xxxx.
Shanahan, Michael K., xxx-xx-xxxx.
Small, Robert J. H., xxx-xx-xxxx.
Smith, Edward S., xxx-xx-xxxx.
Snider, William M. II, xxx-xx-xxxx.
Sowa, Alexander P., xxx-xx-xxxx.
Stubbs, Fred J., xxx-xx-xxxx.
Tanaka, Robert Y., xxx-xx-xxxx.
Turman, William E., xxx-xx-x...
Umble, Robert G., xxx-xx-xxxx.
Vanzant, James W., xxx-xx-xxxx.
Vogt, Robert V., xxx-xx-xxxx.
Voris, Stephen M., xxx-xx-xxxx.
Watt, Donald H. Jr., xxx-xx-xxxx.
West, Robert M. Jr., xxx-xx-xxxx.
Willer, Clinton W., xxx-xx-xxxx.
Wion, Edward J., xxx-xx-xxxx.
Witte, James E., xxx-xx-xxxx.
Wright, James M., xxx-xx-xxxx.

To be second lieutenant

Anderson, John E., xxx-xx-xxxx.
Ariail, Julius F., xxx-xx-xxxx.
Batcheller, James, xxx-xx-xxxx.
Beaty, Helen C., xxx-xx-xxxx.
Billings, Joseph G., xxx-xx-xxxx.
Brown, James A., xxx-xx-xxxx.
Bryan, William H. Jr., xxx-xx-xxxx.
Buckley, Robert P., xxx-xx-xxxx.
Chavers, Stephen R., xxx-xx-xxxx.
Cooksey, Daniel P., xxx-xx-xxxx.
Dandridge, Wayne L., xxx-xx-xxxx.
Day, Charles E., III, xxx-xx-xxxx.
De Haan, Peter, xxx-xx-xxxx.
Dent, James H., xxx-xx-xxxx.
Devine, John F., xxx-xx-xxxx.
Donald, James E., xxx-xx-xxxx.
Dorr, Kevin L., xxx-xx-xxxx.
Edwards, John R., xxx-xx-xx...
Ermold, John D., xxx-xx-x...
Evans, Joseph W., xxx-xx-xxxx.
Ewing, Mark W., xxx-xx-xxxx.
Ezell, Robert B., xxx-xx-xxxx.
Ferguson, Warner T. Jr., xxx-xx-xxxx.
Gossom, Woodrow W. Jr., xxx-xx-xxxx.
Hennings, Richard W., xxx-xx-xxxx.
Kealey, James F., xxx-xx-xxxx.
Kerrigan, John R., xxx-xx-xxxx.
Kling, David M., xxx-xx-xxxx.
Lawson, Harlan A., xxx-xx-xxxx.
Lenz, John W., xxx-xx-xxxx.
Lilly, Albert J., II, xxx-xx-xxxx.
Long, Scott C., xxx-xx-xxxx.
Lord, Harold W. Jr., xxx-xx-xxxx.
Lynskey, Gary L., xxx-xx-xxxx.
McCarron, Francis P., xxx-xx-xxxx.
O'Brien, John C., Jr., xxx-xx-xxxx.
Ortman, Gregory P., xxx-xx-xxxx.
Pekny, William M., xxx-xx-xxxx.
Rosenblatt, Simon J., xxx-xx-xxxx.
Rowley, Cleveland M., xxx-xx-xxxx.
Stewart, Walter L., xxx-xx-xxxx.

The following-named distinguished military student for appointment in the Regular Army of the United States, in the grade of second lieutenant, under provisions of title 10, United States Code, sections 2106, 3283, 3284, 3286, 3287, 3288, and 3290:

Vaupel, Lawrence E., xxx-xx-xxxx.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 10, 1972:

Central Intelligence Agency

The following-named officer, under the provisions of title 50, United States Code section 403, for appointment as Deputy Director, Central Intelligence Agency, a position of importance and responsibility designated by the President under the provisions of title 10, United States Code, subsection (a) of section 3066, in grade of lieutenant general:

Maj. Gen. Vernon Anthony Walters, xxx-xx-..., U.S. Army.

U.S. Army

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade of lieutenant general:

Maj. Gen. George Edward Pickett, xxx-xx-..., U.S. Army.

Action

Walter Charles Howe, of Washington, to be Deputy Director of Action.

In the Marine Corps

The nominations beginning Jesse L. Altman, Jr., to be lieutenant colonel, and ending William E. Zales, Jr., to be 1st lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on Mar. 28, 1972.

EXTENSIONS OF REMARKS

EMBARGO LIFTED ON IMPORTATION OF RHODESIAN CHROME ORE

HON. HARRY F. BYRD, JR.

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Monday, April 10, 1972

Mr. HARRY F. BYRD, JR. Mr. President, the Wall Street Journal of March 27 contains an excellent editorial on the lifting of the embargo on importation of Rhodesian chrome and the reaction to this change in policy.

The editorial rightly points out that the chief beneficiary of the embargo was the Soviet Union, which became the primary supplier of chrome ore to the United States. It was to end our dependence upon Russia for this strategic material that I sponsored the legislation which resulted in the resumption of chrome imports from Rhodesia.

I ask unanimous consent that the editorial, entitled "Fun and Games," be printed in the Extensions of Remarks.

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

Fun and Games

It is not quite accurate to say, as some do, that nations that trade commercial