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Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

SENATE—*Friday, July 20, 1973*

The Senate met at 9 a.m. and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

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

Our Father God, whose Word teaches us to seek the kingdom of God for God's sake alone, and righteousness for righteousness' sake alone, and has promised that all else shall be added, make the people of this land exemplars of this truth. May we be assured of Thy constant presence illuminating and guiding our work. Teach us to distinguish right from wrong and always to choose the right. When the way is uncertain, speak to our inmost being saying, "This is the way, walk ye in it." At this time of dedication, give us grace to work as instruments of Thy purpose upon the Earth.

We pray in the Redeemer's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 20, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. ROBERT C. BYRD thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, July 19, 1973, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. 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.

PHONE CALLERS

Mr. SCOTT of Pennsylvania. Mr. President, with tongue firmly lodged in cheek, for fear that in this paranoiac town I may be taken seriously, I would suggest that, hereafter, all anonymous phone callers be required to register under the Lobbying Act. [Laughter.]

WAR POWERS ACT

The PRESIDING OFFICER (Mr. NELSON). Under the previous order, the Senate will now resume the consideration of the unfinished business (S. 440), which the clerk will state.

The legislative clerk read as follows:

S. 440, to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by Congress.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, what is the parliamentary situation? Do I correctly understand that the Eagleton amendment is pending?

The PRESIDING OFFICER. The pending question is on agreeing to amendment No. 364 of the Senator from Missouri (Mr. EAGLETON).

Mr. JAVITS. And what is the time on that, Mr. President?

The PRESIDING OFFICER. The time limitation on amendment No. 364 is 1 hour.

Who yields time?

Mr. EAGLETON. Mr. President, I call up my amendment No. 364 and would inquire, is it not the pending business?

The PRESIDING OFFICER. It is the pending business.

Mr. EAGLETON. I thank the Chair.

Mr. President amendment No. 364 is a "housekeeping" type of amendment. In the drafting of S. 440, a typographical error was made on page 5, line 2.

I would ask the Senator from New York (Mr. JAVITS), as the other principal sponsor of S. 440, if he has had a chance to read amendment No. 364 and does he not agree that this is a clerical mistake?

Mr. JAVITS. Mr. President, I shall speak on my own time, if the Senator from Missouri is agreeable.

Mr. EAGLETON. Yes.

Mr. JAVITS. Mr. President, I yield myself such time as I may require.

The Senator from Missouri is entirely correct. The error is almost self-evident. It occurred in the printing of the bill. It will be noted at the point where the amendment occurs, at the top of page 5, that the words "Armed Forces" should be changed, as the Senator from Missouri has suggested, to "military forces," to have it conform to the body of the text. We appreciate having the error called to our attention, and in this form the amendment should be accepted.

However, since we have time on the amendment, I should like to take a few minutes of that time, before yielding back whatever remains—and I shall not be long—in order to set in frame, as we have had an interrupted debate of this matter, the situation as I see it now.

Let us turn to the primary amendments which will be made in respect of the war powers bill; Senator EAGLETON's principal amendment relates to problems involving the CIA and the paramilitary forces.

There will be an amendment by the distinguished chairman of the Committee on Foreign Relations (Mr. FULBRIGHT), respecting deployment. There is a possibility of other amendments aside from these two including possibly a substitute for the whole bill.

There may be other amendments, of course, but those are the primary amendments which have been called to my attention.

I have established this frame of reference for this reason: The war powers bill was passed by the Senate a little more than a year ago by a very heavy vote, 68 to 16. Since that time the bill has been obviously extremely closely scrutinized by many persons having very sharp eyes and very sharp minds. In addition, the Committee on Foreign Relations took the precaution of having another hearing on the war powers bill before actually reporting it to the Senate this time.

This very, very searching scrutiny by commentators, columnists, foreign policy experts, Members of the House and Senate, and academicians, both at home and abroad, have, in my judgment, been a great tribute to the durability of the bill. The fact is that the fundamental structure of the bill has withstood every assault and every scrutiny. This is critically important because the bill is a historic piece of legislation. It represents an effort to define a situation which has not been defined since our Republic was founded. The need to define it now has become unavoidable.

Events in the last two decades have convinced us that it must be defined. Even when we face a situation like that, we hope that very critical problems will not arise which will make us come to a decision.

But the issue of war or peace, the paramount issue of not only our time but of all time, when we face the reality of any difficulty, when American casualties almost exceed the imagination, compels us to come to this decision.

Therefore, I think it should be a matter of very important reassurance to Senators that, notwithstanding the careful scrutiny over such a long period of time—most unusual for any bill—which this bill has received, it has stood the test and stood it well. So well that the other body, which started out a long way from the ideas contained in this bill, has gradually come to the same ideas, albeit in different form, with different methodology, with many deficiencies. But nonetheless the House has come to the same fundamental approach to this very profound problem as is embodied in the Senate war powers bill, as passed last year and as we are again considering it this year.

Mr. President, referring now specifically to what is in essence the coalition which produced this bill before the Senate, that, itself, is testimony to the validity of this thesis, the searching inquiry which has surrounded it and the strength it holds in being presented to the Senate.

Senator STENNIS, the chairman of the Committee on Armed Services, generally considered very staunch in terms of American security—and quite properly so—in his general philosophy encompassing almost any kind of enemy capability which the United States has to face, joined in the original presentation of the bill and has been its constant and diligent supporter. He will, by a statement today which the manager of the bill, Senator MUSKIE, will read, demonstrate his continuing fidelity not only to its concept but also to its language.

It is something which really would be denigrated, so important, is it to our country, if I should say that I am gratified. I think millions of Americans and future generations will be gratified that the chairman of the Armed Services Committee has espoused the single effort which is most likely to control what the Founding Fathers called the "dogs of war."

Senator EAGLETON, though I do not happen to agree with him in his major amendment today—that quite aside, because, again, it does not go to the heart of the bill—has been a masterful partner in the architecture which the bill represents. Again, he has given it a devotion and constancy which I would not wish to denigrate by expressing mere personal appreciation; but it will be appreciated also, in my judgment, by millions of Americans and by generations not yet born, when we have accomplished this historic departure from the past.

Also, Mr. President, I should like to pay my tribute to Senator GOLDWATER, who emerged as probably the principal Senate opponent of the bill, and to others—professors, distinguished men in other callings—who appeared before us to take the bill apart.

I believe in debate; I believe in cross-examination. I consider Senator GOLDWATER one of the really great patriots of our country in terms of its security, and I have admired the fact that not just in words for Senate courtesy, but also in the depth of his feeling, he understood that all of us who advocated the bill—almost two-thirds of the Senate—also had the deepest feeling for the security and the prosperity of our country and peace in the world, but for the survival of American values, beyond everything else, in the decades ahead.

I also pay my tribute to the members of the Committee on Foreign Relations. Senator FULBRIGHT, who has been a constant supporter of the bill—though he differs with some of its details, as he will show by his amendments—has also been a tower of strength to us. Without him, we never could have turned the bill out or moved it to where it is today. Similarly, the majority leader and the minority leader, who are members of the Foreign Relations Committee, have been absolutely invaluable aids in this respect.

Mr. President, I hope Senator EAGLETON will forgive me for saying these things at the beginning instead of the end. These words are always reserved for the end. If the Senator is agreeable, I will yield back the remainder of the time, and we can proceed to his amendment.

Mr. EAGLETON. The Senator from South Dakota has an appointment and would like to speak for 10 minutes on the bill. I am going to yield him 10 minutes of my time, in order to accommodate his schedule, unless there is an objection.

Mr. JAVITS. That is fine. Would the Senator like his amendment adopted first?

Mr. EAGLETON. No. I will yield to the Senator from South Dakota time on the amendment.

Mr. JAVITS. Mr. President, I note that the assistant majority leader, Senator ROBERT C. BYRD, is here, and I wish to pay my tribute to him, too, as a constant, indefatigable cosponsor and supporter and to express my appreciation for his important help in respect to bringing this bill to the position it is in today.

Mr. ROBERT C. BYRD. I thank the Senator for his generous remarks.

Mr. EAGLETON. I yield 12 minutes to the Senator from South Dakota, on the amendment.

Mr. ABOUREZK. I thank the Senator from Missouri for yielding.

Mr. President, for the past 25 years, this Nation has witnessed the dangers of allowing the President a virtually unlimited right to engage in war. The misguided gambols in Cuba and the Dominican Republic, the unpopular agonies of Korea, the shameful struggle in Indochina, stand as grim testament to the dangers of Executive prerogative in matters of war and peace. All of us, therefore, must applaud efforts to reassert the constitutional role of Congress, and to limit the warmaking powers of the President. The efforts which have been expended by the Senate Foreign Relations Committee and individual Senators to achieve this goal have my strong respect and support.

It is, therefore, with reluctance that I find it necessary to register my strong opposition to the provisions of the war powers bill, Senate bill 440. I do so in spite of the fact that I originally agreed to cosponsor this legislation. After careful consideration however, I am now of the belief that this bill will establish a dangerous standard which in fact expands, rather than contracts President's warmaking powers.

The war powers bill establishes a 30-day limit on "undeclared" wars, initiated without congressional approval. The President is empowered to enter into an undeclared war in three very different instances. He may "repel an armed attack upon the United States," a power envisioned by the framers of our Constitution, and with which no one would quarrel. The other two instances are of much more questionable prudence.

The bill would empower the President to repel an armed attack upon Armed Forces of the United States located outside of the continent. This provision would not be deplorable if the Senate exercised its constitutional role in foreign policy and gave consideration and approval to all treaties and commitments made by the United States. This is not currently the case. The President claims the right to make commitments by Executive agreements without the approval, and often without the knowledge of the Senate. He claims the right to place American troops wherever it pleases him. We now have some 2,000 bases or military detachments located in the far corners of this world. By giving the President the power to defend each of them, without congressional consideration of the location and wisdom of their placement, we are simply empowering Presidents to locate troops in such a manner as to provoke attacks to justify Presidential warmaking. This Nation is not ignorant of such practices. The Gulf of Tonkin Resolution resulted from an incident off the coast of North Vietnam which may have been provoked. Indeed it may have been manfactured, in order to justify the bombing of North Vietnam. For Congress to grant the President the right to defend American forces it must first, as Raoul Berger, the noted constitutional historian has so wisely suggested, exercise its constitutional power to insure that such forces are not placed in provocative positions, or used in provocative exercises.

The war powers bill empowers the President to enter into war in order to forestall the "direct and imminent threat of such an attack" on the United States or on American troops abroad. This provision could have been cited by this administration to justify the Cambodian intervention in 1970 and the Laos intervention in 1971, both of which were publicly rationalized as necessary to forestall attacks on American troops. It also could be invoked to sanction a preemptive first strike with nuclear weapons, a capacity which this Nation has refused to renounce. In essence, it constitutes a blank check which will implicate Congress in

whatever aggressive war-making a President judges to be necessary.

The dangers of this provision are manifested by our recent experiences in Indochina. Experiences which this bill originally sought to correct for the future, and which caused me to initially applaud the effort to prevent a recurrence of these experiences. Let us look at Cambodia. After thousands of secret B–52 bombing missions for 3 or 4 years, the President, citing "secret" or "classified" reports notified the American people that it was necessary to invade the country to avoid an imminent threat of an attack on American forces in Vietnam. The attack enmeshed this Nation in the defense of a corrupt junta fighting against its own people. This is exactly what occured in 1970. The only difference made by the war powers bill is that, in the future, a President will be able to tell the American public that he has explicit congressional authorization to engage in such an attack, authorization provided by section 3 of this bill. Finally, the war powers bill provides a 30-day limit on Presidential warmaking without congressional approval. Yet it includes a loophole so large, so forgetful of our recent tragic experience as to nullify that provision.

Hostilities can continue without congressional approval beyond the 30-day limit if the President "determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of the Armed Forces" requires continued fighting to bring about "prompt disengagement." "Prompt disengagement" is exactly what we have witnessed, according to the President, for the past 5 years in Vietnam and Cambodia and Laos. "Prompt disengagement" which has included the dropping of more bombs than at any other time in our history. "Prompt disengagement" which has resulted in attacks against Cambodia and Laos, and the terror bombing of North Vietnam. With this clause the war powers bill not only ignores our recent agonies, but legitimates them, ar. act which I find unconscionable.

The major shortcoming of this bill, however, is broader than such semantic interpretations. This bill simply abandons the constitutional requirement that no war be entered without prior congressional declaration. It gives to future Presidents the right to claim that Congress has legitimated Executive warmaking. We have witnessed an unconstitutional assertion of power over questions of war and peace by a succession of Presidents. Now in the hope of limiting that assertion, I fear that we will now pass legislation which authorizes much of it. Let me briefly explain.

We should not be misled by Secretary Rogers and other executive spokesmen who suggest that the President now has the constitutional authority to make war. Article I, section 8, clause 11 of the Constitution states that "The Congress shall have power to declare war." James Wilson, the "most learned and profound legal scholar of his generation," and second only to Madison as architect of the Constitution, noted that this power was lodged in Congress so that no "single man (can) involve us in such distress."

The framers of our Constitution feared that rulers tended to make war for reasons of honor, pique, and pride. They sought to make war difficult to enter, because the genius of a democracy was that it was peaceful and peaceloving. Thus, they required that such a momentous decision only be undertaken with the consideration and support of the Congress.

The framers acknowledged only one exception to this rule—the President could use the Armed Forces to repel sudden attacks on the United States. Such attacks threaten the country itself and naturally required immediate response. That was to be the only exception.

We have witnessed and grown frightful accepting of a course of Executive usurpation of this power. The President and his spokesmen claim that his role as Commander in Chief or his inherent power as Chief Executive, provide him with the constitutional right to make war. Yet any constitutional scholar of independence agrees that the framers had no such intention, that neither the grant of Executive power nor the role of Commander in Chief was intended to give the Executive the right to make war unilaterally.

In the end, executive spokesmen must rely on what they claim is a practice of Presidential warmaking—a practice which alters the original distribution of powers in the Constitution. "Adaption by usage"—the administration language is simply a polished label designed to cover the unpalatable claim that the President by his own practice may revise the Constitution and disrupt the division of powers in order to meet his taste or designs.

Administration spokesmen claim that a history of undeclared armed encounters—numbering from 125 to 165—establishes new constitutional authority in the President. These are not strong precedents. A careful analysis by Francis Wormuth, a noted constitutional scholar, shows that 48 had congressional approval, 1 was in self-defense, and 6 were minatory demonstrations, 6 to 8 were clear usurpations.

But the strength of the precedents is irrelevant. To treat such incidents as altering the constitutional allocation of power is to give the President the unilateral right to amend the Constitution. If such a basic alteration in the constitutional scheme is necessary, then let us undertake to achieve it in the manner provided by the Constitution itself—by amendment with submission to the public, and not by unilateral Executive transgression.

This bill, in essence, accepts the administration position, legitimating Presidential warmaking even as it seeks to limit its use. Passage of this legislation will lend congressional authority to Executive war. It will confuse the public, embolden future Presidents, and worst of all, dilute the Constitution. With this bill, Congress puts its imprimatur on the future history of Executive war, and accepts unilateral Executive usurpation as a proper mode of amending the Constitution.

This tendency of Congress to legitimate illegal Executive practices in the hope of limiting them now pervades many of the positive efforts this body is making to limit Presidential power.

For example, most Members of the Senate agree that the Presidential impoundment of over $15 billion is unconstitutional. In many instances, it has represented an item veto, a veto without congressional review. The Constitution gave Congress the power to override Presidential vetoes. Congress was to decide domestic priorities through its power of the purse. Impoundment violates the constitutional schema. To limit this arrogant assertion of Executive license, Members of this body have begun consideration of legislation. Last year, as a first step, we passed a requirement that the President notify us of all impoundments. Immediately, officials of the OMB claimed that such legislation constituted tacit recognition of the legality and constitutionality of impoundment.

The pattern is similar: An Executive usurpation of the powers of Congress under the Constitution; a moderate attempt by Congress in response; and the ensuing claim by Executive spokesmen that such an attempt legitimates the initial usurpation. Moreover, in impoundment as in the Javits bill, Senators have proposed legislation which would authorize impoundments with the proviso that Congress approve them within a given time period. Once again, the Congress would legitimate a clearly unconstitutional Presidential practice in the hope of limiting it.

With such legislation, we are giving away our powers, admitting that the executive branch has a growing monopoly over decisionmaking in this society. As the Roman Senate before us, I fear we will discover that such a course will soon terminate our usefulness, transform us into lobbyists for Executive favors.

If we consider the pending bill seriously we can all predict the result. A President will initiate war in some steamy corner of the world, claiming that an imminent threat to our troops exists. After 30 days he will come to Congress and to the public, and state that American forces are in danger, that we must rally to the flag. There is nothing in the history of this body, or of any legislative body which suggests that we can or would refuse to "support the troops" in a moment like that. That is precisely why the founders of this great Nation provided for a congressional declaration of war prior to its initiation. Moreover, even if Members of this body dared to face down the President, his response would be predictable. With great reluctance and a heavy heart, exercising the powers given him by this bill, he would announce that the fighting must continue to protect the troops in the course of their "prompt disengagement." And in some unknown corner of the world, American men would die, bombs would fall, peasants would be slaughtered, populations uprooted—the President would have his little war, and

the Congress would be an accomplice. At such a time, this great body will be known not as prudent, but as incontinent, not as powerful, but as important, not as courageous, but as supine, not as an equal branch of Government, but as an ornament to a warmaking machine we are unwilling to control in spite of public outrage, moral obloquy, and Constitutional mandate. How many years will it be after the passage of this bill? Ten years, five, one year, six months? I strongly urge that we reconsider our course.

I thank the Senator for yielding.

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

Mr. EAGLETON. I wanted to yield to the Senator from Arizona.

Mr. MUSKIE. To make a brief request?

Mr. EAGLETON. I yield.

Mr. MUSKIE. Mr. President, I ask unanimous consent that James Woolsey, Nancy Bearg, and my legislative assistant, Alan Platt, be allowed the privileges of the floor during the consideration of the bill.

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

Mr. JAVITS. Mr. President, I made a similar request for Albert Lakeland, of my staff.

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

Mr. EAGLETON. Mr. President, I yield 5 minutes to the Senator from Arizona (Mr. GOLDWATER).

Mr. JAVITS. Mr. President, will the Senator yield to me for 1 minute? If he needs more time, I will yield him 1 minute from my time.

Mr. GOLDWATER. I yield.

Mr. JAVITS. The Senator issued a challenge that we answer 25 points referring to the war powers bill. I have done that and will make available the answers to the Senator from Arizona, and I offer them for the RECORD at this time.

On July 18, 1973, during the war powers debate, Senator GOLDWATER made the following statement:

> I recall the debate last time and the fact that we did not have much time. I am just as disappointed as is the Senator from Colorado in the fact that the Committee on Foreign Relations did not seemingly allow any opposition witnesses. I requested to be heard before the committee, but I was not given a chance to be heard, so I have to be heard on the floor.

Here are the facts:

1. In 1972 the Senate debated the War Powers Act for a total of 11 days. There was no effort made to limit or cut off opposition debate and the bill passed overwhelmingly, 68 to 16.

2. With respect to GOLDWATER's view that "the Committee on Foreign Relations did not seemingly allow any opposition witnesses" in its hearings this year, the fact is, as stated in the hearings: Charles M. Bower, acting legal adviser of the State Department, testified on behalf of the administration in opposition of the bill, as did David Maxwell, a former president of the ABA and member of the State Department Advisory Panel on International Law. Moreover, as indicated on page 53 of the hearing record, the following persons who had indicated opposition to the bill were specifically and personally invited to testify but declined or were unable to do so:

Secretary of State Rogers.
Deputy Secretary Rush.
Prof. Eugene Rostow.
Prof. Arthur Schlesinger, Jr.
Former Secretary of State Dean Rusk.
Former ABA President Eberhard Deutsch.
Former ABA President Charles Rhyne.
Prof. Francis Wormuth.

All of those above were not only personally and individually invited, but each was requested to submit a statement for the record if he were not able to testify in person. Senator DOMINICK submitted a statement for the record, which appears on page 250 of the hearings. Senator GOLDWATER was invited to testify but was necessarily absent in Arizona for the week during which the 2-day hearings took place. At the request of Senator GOLDWATER's office, you personally placed his statement in the record. The statement of Senator GOLDWATER occupies 40 pages of the hearings—from page 116 to page 156.

In addition, it is pertinent to point out that during the course of the Foreign Relations Committee hearings, both in 1971 and 1973, six witnesses appeared in opposition to the war powers bill: Senator GOLDWATER, Prof. John Norton Moore, Secretary of State Rogers, former Under Secretary of State George Ball, Acting Legal Adviser Charles M. Bower and Mr. David Maxwell.

Moreover, extensive critiques of the war powers legislation appear as appendixes in the printed hearings conducted in 1971 and 1973.

Senator GOLDWATER's unanswered "25 Grave, Practical, and Constitutional Problems:"

1. "The bill prevents 'show of force' and other mere deployments of troops or arms."

Comment: It was made absolutely clear during the debate last year and again is made clear in the committee report this year that show-of-force deployments—for example, the movement of the 6th Fleet into the eastern Mediterranean during the 1970 Jordanian crisis—are not restricted by the bill unless and until they involve the Armed Forces in hostilities or in situations where imminent involvement in hostilities is clearly indicated by the circumstances. Should these latter conditions pertain, then, of course, "show of force" would be covered by the bill as that is the entire intention of the bill, which relates to involvement in hostilities.

2. "U.S. Forces cannot be used in defense against any threat which poses a future, rather than immediate, danger to the United States, even if the ultimate safety of the Nation is clearly at stake."

Comment: In fact, under section 3(4) of the bill, the President has ample opportunity to obtain from the Congress specific statutory authority to deal with any legitimate future threat to the security of the United States. However, in the absence of any emergency, which is the situation hypothesized by Senator GOLDWATER, the bill rightly does, of course, require prior congressional authorization pursuant to the Constitution of the United States. In this context, the admonition articulated in 1848 by Abraham Lincoln is, most pertinent and articulate:

> Allow the President to invade a neighboring nation, whenever he shall deem it necessary to repel an invasion, and you will allow him to do so, whenever he may choose to say he deems it necessary for such purpose—and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect . . . If, today, he should choose to say he thinks it necessary to invade Canada, to prevent the British from invading us, how could you stop him? You may say to him, I see no probability of the British invading us but he will say to you be silent; I see it, if you don't.

3. "The bill endangers the entire structure of American mutual security agreements which now stand as the greatest safeguard global peace."

Comment: This generalization is unsupported by fact or compelling argument. The important point is that all of our mutual security treaties contain the provision that its articles are to be carried out "in accordance with Constitutional provisions." In the United States, the "constitutional provisions" with respect to going to war require the approval of both Houses of Congress.

4. "The bill repeals outstanding area resolutions, such as the Middle East Resolution."

Comment: The contrary is clearly stated on pages 23–24 of the committee report, which reads as follows:

> There is a clear precedent for the action anticipated in subsection (4)—the "area resolution." Over the past two decades, the Congress and the President have had considerable experience with area resolutions—some of it good and some quite unsatisfactory. In its mark-up of the war powers bill, the Foreign Relations Committee considered this experience carefully in approving the language of subsection (4). The wording of the final clause of subsection (4) holds the validity of three area resolutions currently on the statute books. These are: the "Formosa Resolution" (H.J. Res. 159 of January 29, 1944); the "Middle East Resolution" (H.J. Res. 117 of March 9, 1957, as amended); and the "Cuban Resolution" (S.J. Res. 230 of October 3, 1962).

5. "The bill blocks U.S. humanitarian relief missions, such as the 1964 joint United States-Belgian rescue operation in the Congo."

Comment: It is not at all clear what Senator GOLDWATER means by "humanitarian relief missions." If such missions involve the Armed Forces of the United States in hostilities or in situations where their imminent involvement is clearly indicated by the circumstances, the war powers bill does indeed and quite properly apply. However, there is, of course, no restriction on humanitarian relief operations per se in this bill, nor, of course, is there any intention of restricting such relief operations which may be appropriate, providing they do not involve the Armed Forces in a war without the approval of Congress.

6. "The bill prohibits any military action by the President designed to defend the overseas economic position of the United States."

Comment: Under section 3(4) the bill provides a procedure for obtaining congressional authorization for any justified

military action in defense of U.S. economic interests, as, if and when concurred in by the Congress. The bill does, of course, prohibit unilateral "gun boat" diplomacy by the President on behalf of U.S. property or interests abroad, as was so often the lamentable practice during the heyday of 19th century imperialism in Europe—and even emulated by American Presidents in the latter part of that century.

7. "The bill prohibits U.S. personnel in the NATO integrated commands from exercising any functions—any functions—during a crisis."

Comment: Section 9 of the bill (page 9, lines 7–15) clearly provides to the contrary. This is additionally made unmistakably clear on page 31 of the committee report.

8. "The bill may trigger World War III by causing foreign adversaries to believe the United States will not respond to threats to world peace, because of legislative restrictions."

Comment: The credibility of U.S. actions in the world require a united home front which can only be achieved when the Congress is joined with the President in decisionmaking and in support of basic U.S. international security policy.

9. "The bill compels a vote by Congress shortly after each crisis occurs and might precipitate a legislative reaction far more dangerous than the response the President has chosen."

Comment: I reject the fundamental premise of this charge—that is, that the Congress is less responsible than the President. I believe that the last 10 years at least has been to the contrary. Moreover, there is nothing in the bill which compels Congress to vote at the peak of a crisis. In emergency situations, the President has 30 days to act without specific statutory authorization. The choice of this long a period is designed precisely to allow Congress to consider each situation thoroughly and dispassionately—in contrast to the experience of Congress with respect to the Tonkin Gulf Resolution. Moreover, the provisions of S. 440 are flexible enough to enable the Congress to decide by majority vote just how it wishes to dispose of each issue—allowing full flexibility to restrain from untimely votes, such as hypothesized by Senator GOLDWATER.

10. "The bill uses three totally different and unexplained terms to describe the nature of the threat which must exist before the President can respond to foreign dangers."

Comment: Section 2 of the bill is a negative statement of "purpose and policy." It is not the operative section of the bill. Therefore, the terminology is not statutory controlling. For statutory purposes the terminology of section 3 is controlling over the slightly varient terminology of section 2, the "purpose and policy" statement. So far as the slightly divergent terminology of the initial paragraph of section 3, as compared with the language of sections 1 and 2 is concerned, there is no difference in meaning or intent. The charge is thus a distinction without a difference.

11. "The 30-day limit of the bill, after which troops cannot be used, even in emergency situations, is unrealistic and dangerous."

Comment: The characterization of section 5 as "unrealistic and dangerous" is purely a subjective judgment. It is not a conclusion that was reached by the overwhelming majority of the Senate, which approved the War Powers Act by a vote of 68 to 16 on April 13, 1972. In point of fact, the sponsors of the legislation believe that it is more unrealistic and more dangerous to allow the President unilaterally to make war without restraints without obtaining the concurrence of the Congress and thus the acquiescence of the American people. The tragedy of our Nation in the undeclared, Presidential war in Indochina which has lasted already for a full decade demonstrates the greater dangers to our Nation and its security of unrestrained Presidential warmaking.

12. "The President could not protect U.S. fishing vessels against attack in territorial waters claimed by another nation."

Comment: Any decision to provide armed naval escort to U.S. fishing vessels certainly ought to require the prior statutory approval of the Congress. Disputed fishing beds are well-known and there would be ample opportunity to obtain a joint Presidential-congressional decision to intervene militarily in a fishing dispute. Certainly the very gradual buildup over a period of years of the British-Icelandic dispute indicates that these are matters which can be considered judiciously in advance rather than on an emergency basis.

13. "The bill provides no authority for immediate action designed to rescue U.S. citizens hijacked on an aircraft flying through international airspace."

Comment: It is difficult to envisage a rescue being attempted in midair. Hijacked aircraft must land, at which point rescue efforts could be undertaken under the provisions of section 3(3). Nonetheless, midair rescues could, of course, be made without restraint by S. 404.

14. "The President lacks any authority under the bill for the protection of U.S. citizens on vessels within international straits."

Comment: It is amply clear from the legislative history of the bill that any good faith reading of the term "high seas" would be within the ambit of S. 440. As used in S. 440, the words "high seas" are used to distinguish international waters from territorial waters as recognized by the United States in accordance with pertinent international agreements. If upon enactment of this legislation a serious ambiguity persists in the judgment of the executive branch, necessary authorization can be requested and obtained under section 3(4) of the bill.

15. "The 30-day time restriction on emergency military actions might pressure a President to go all out by resorting to total war during the short period of time allowed him."

Comment: This charge persumes bad judgment and irresponsibility on the part of the President. The bill assumes good faith and a sense of high responsibility on the part of the President, as well as upon the part of the Congress in guarding the security interests of our Nation. In the opinion of the authors of the bill, it is not feasible or possible to legislate on the basis of presumed bad faith, or irresponsibility on the part of the President.

16. "The bill attempts to do what the Founding Fathers felt they were not wise enough to do, anticipate the unlimited and unexpected variations of future events when defensive measures may be needed."

Comment: The implication of this charge is that total and unfetterd advance authority must be given to the President to wage war at his sole and total discretion. The Constitution of the United States clearly rejects any such working premise, as does S. 440. One cannot legislate on the basis of hypothetical unknowns. Rather, one must legislate on the basis of known factors and situation and hard experience. S. 440 is based upon actual historical experience in contrast to future, unknown, unidentified hypotheses. The authors of the bill believe that this is the correct legislative approach and entails far fewer dangers to our national security.

17. "The Declaration of War clause is an outmoded and invalid basis for passing legislation which prevents Presidential defensive reactions against foreign dangers."

Comment: S. 440 specifically and explicitly deals with situations arising "in the advance of a declaration of war by Congress." Moreover, the constitutional underpinnings of S. 440 go beyond the exclusive constitutional authority of Congress to declare war. Article I, section 8 enumerates other plenipotentiary war powers to the Congress, including the "necessary and proper" clause, the authority "to make rules for the Government and regulation of the land and naval forces" and to "provide for the common defense."

Senator GOLDWATER's view of the intention of the drafters of the Constitution, as shown by his statement: "The Founding Fathers very wisely gave the power to go to war to the President and the power to declare war—which means not much—to the Congress," is just not mine nor do I believe it is that of the sponsors or a great majority of the Senate.

18. "The bill erroneously assumes that the power 'to declare war' means the same thing as the sole power 'to make war'—which, I just explained, it does not."

Comment: S. 440 does not assume that the power to declare war is the same thing as the power to make war. As is well known, the initial draft of the Constitution gave the exclusive power "to make war"—this phrase being retained unchanged as it appears in the Articles of Confederation—to the Congress. On August 17, 1787, during the final revision of the text of the Constitution, James Madison and Eldredge Gary "moved to insert 'declare,' strike out 'make' war; leaving to the Executive the power to repel sudden attacks." This quotation is from Madison's notes on the Constitutional Convention. S. 440 follows very

strictly the letter and spirit of the Constitution with respect to the relationship of declaring war and to making war, as intended, proposed and explained by James Madison, the author of this drafting change.

It is significant to note further that S. 440 deals with situations wherein there is no congressional declaration of war, thus clearly contemplating situations in which there is war in the absence of a congressional declaration of war. The purpose of S. 440 is to restore the intended authority of Congress to "decide on war" in view of the modern practice of Presidents who do not request declarations of war from the Congress.

19. "The Necessary and Proper Clause does not give Congress power to define and restrict the constitutional functions of the President."

Comment: The authors of the bill believe that the "necessary and proper" clause of the Constitution gives Congress exactly the power which is defined in that clause:

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

S. 440 is a wholly constitutional and proper exercise of the "necessary and proper" clause. In testimony before the Senate Foreign Relations Committee leading constitutional authorities of our Nation have affirmed the constitutionality of S. 440, including specifically the appropriations and constitutionality of its use of the "necessary and proper" clause.

20. "There is not a single statutory precedent for war powers controls covering unnamed geographic areas and unforeseen situations."

Comment: It is not at all unusual for Congress to initiate legislation which has no specific statutory precedent, as the need for such legislation arises in our Nation's history. Therefore, the absence of a specific statutory precedent would not be any more significant with respect to S. 440 than was the case respecting legislation establishing the Department of Atomic Energy, for instance. In point of fact, however, very interesting statutory precedents dating back to the earliest days of our Republic do exist; for example, statute 1 of May 2, 1792, and statute 2 of February 28, 1975, both of which contain provisions and concepts remarkably parallel to S. 440.

21. "Historical usage has conclusively established the constitutional basis of Presidential defensive reactions against foreign dangers on his own authority and initiative."

Comment: Section 3 of S. 440 specifically deals with emergency defensive actions by the President in the absence of prior congressional authorization.

22. "It is an historical mistake of monumental proportions to assume the war powers bill would stop future Vietnams, when under its terms it would not have prevented Vietnam itself."

Comment: This is an expression of opinion which the sponsors of S. 440 do not share. In view of the Senate vote of 1972 on the War Powers Act, it is an opinion that is not widely shared by the Senate as a whole.

23. "The bill creates a dangerous uncertainty for the country in time of crisis by denying to the President any judgment and discretion of his own to determine if an emergency exists which authorizes use of military force."

Comment: Section 3(4) as explained in some length in the committee report provides a means through which the President and the Congress can fashion any degree of flexibility, discretion and judgment which they jointly think necessary and proper in defense of our Nation's security.

24. "S. 440 will incite one of the gravest constitutional crises in American history without a means of resolution, because the Supreme Court treats the use of troops as a political question not subject to judicial decision."

Comment: Our Nation already is in the midst of a grave constitutional crisis with respect to the exercise of our Nation's war powers. S. 440 in fact provides a wholly responsible way out of the constitutional crisis which already exists.

25. "S. 440 ignores the true purpose of the Founding Fathers to prevent a recurrence of the interference with military operations which Washington experienced with the Continental Congress."

Comment: As almost all constitutional historians have pointed out the principal purpose of the Founding Fathers in drafting the war powers provisions of the Constitution was to prevent a concentration of "monarchial" powers over war in the hands of the Executive. Many quotations in this regard have been cited during the Senate debate, and are contained in the hearings and referred to in the committee report.

Mr. GOLDWATER. Mr. President, I thank the Senator from Missouri for yielding to me.

Before I make my remarks, I want to thank the Senator from New York for his very kind remarks about me. I appreciate them and I want him to know that the whole experience has been an enjoyable one. There has been no open fighting about it. He and I disagree as to whether this question should be approached by legislation or by a constitutional amendment. I think that is very fundamental. I do think, however, this discussion—I would not call it a debate, because that would be stretching it too far, but this discussion—on the floor will, I think, if the American people will follow it and the press will follow it and if we can get people talking about it, lead to some attempt to amend the Constitution—not necessarily to take away war powers from the President, but to put more control on them. In that case I would probably vote against such an amendment, but I believe it is the proper approach.

Mr. President, I have made two speeches on this subject. I am not going to be able to be here during the vote because I have to go west because of illness in my family.

THE PRESIDENT'S CONSTITUTIONAL WAR POWERS

Mr. President, the sponsors of S. 440 have asked during the debate for opponents of the bill to come up with some "semblance of authority" for the Presidential war powers. I intend to speak to this point directly at this time and am glad to hear that the sponsors of S. 440 will also be making a reply to the analysis of 25 questions about the bill to which I earlier invited them to respond.

Mr. President, there are four basic constitutional sources of the President's powers over national defense.

First. The President is expressly granted by article II, section 1, all the "executive power" of a sovereign nation, which includes as its natural attribute the primary authority over use of military forces in defense of important national interests.

Second. The President is specifically designated by article II, section 2, as the "Commander in Chief" and as such is charged with the supreme control and direction over the Armed Forces.

Third. The President is expressly granted the right by article II, section 3, to execute the laws, which, as the Supreme Court has recognized in the Neagle case, includes the capacity to base action directly on his own reading of obligations growing out of our international relations.

Fourth. The President is vested with a "constitutional primacy in the field of foreign affairs." This is an implicit power which is recognized by at least six of the present members of the Supreme Court.

Mr. President, constitutional authorities throughout our history have been almost unanimous in concluding that the President is vested with an independent control and direction over the military forces in any situation where he believes there is a threat to our country or its freedoms. The notion that the President is subject to the policy directives of Congress has been rejected by leading jurists time and again. It is only during the last decade or so, after the going got tough in Vietnam, that constitutional revisionists began changing their minds.

The principle of a discretionary right vested in the President to commit troops outside the country as a means of preserving or advancing the national safety is a consistent theme throughout more than a century of authoritative writings. It is most certainly true, as John Quincy Adams remarked in 1836, that the President is bound in duty to strive toward peace with the other nations of the earth. "Yet," Adams warned, "must a President of the United States never cease to feel that his charge is to maintain the rights, the interests and the honor no less than the peace of his country—nor will he be permitted to forget that peace must be the offspring of two concurring wills. That to seek peace is not always to ensue it."

This fundamental and philosophical observation on the condition of mankind echoed the change of heart which had taken place in Thomas Jefferson, who admitted his error in believing that the United States could remain at peace whatever the trend of world events elsewhere. By March 2, 1815, Jefferson had come to realize that "experience has shown that continued peace depends not

merely on our own justice and prudence, but on that of others also."

Mr. President, this reflects the same practical attitude which guided the Founding Fathers in the formation of the new Republic. However much the Founding Fathers may have wished to live by a policy of avoiding foreign troubles, they recognized even then, having witnessed the great weakness in the management of military affairs by the Continental Congress, that the Nation cannot be safe unless there is a single Commander in Chief with an unrestricted discretion to resist foreign dangers wherever and whenever they may exist.

In whichever capacity, from his Executive power or as Commander in Chief, Presidents have throughout American history—as already recognized by John Quincy Adams in 1836—committed American troops to danger points outside the boundaries of the United States without a declaration of war. These total almost 200 occasions. These are not instances in which the President merely called out the troops. This list includes only actual battles overseas or landings of American forces on foreign soil, except for fewer than 10 instances when major deployments of forces are included. All of these Presidential actions involved the serious danger of war.

Whatever these Presidents may otherwise have written on the subject, it is an unquestioned fact that almost every one of them has reacted on his own initiative to any crisis which he believed might present, or might develop into, an unacceptable threat against our national security. There is a consistent course of action by which Presidents have always used whatever force they believed was necessary and technologically available at the particular moment to respond to foreign threats.

President Buchanan, to cite an example relied upon to the contrary in the report of the Foreign Relations Committee, sent American troops into armed action abroad on 11 occasions. In one major episode occurring in 1858, President Buchanan risked an all-out conflict with Great Britain by ordering, without authority from Congress, a naval force to protect all merchant vessels of the United States on the high seas from search or detention by the vessels of any other nation. Fortunately, a conflict with Great Britain was avoided at the last moment by her abandonment under this pressure of her claim to the right of visit and search.

Thus, Mr. President, the idea that Presidential troop commitments are a recent development as alleged in the report of the Foreign Relations Committee is a myth. Moreover, the committee is in error in its report when it claims that prior to World War II "Presidential use of the Armed Forces without congressional authorization was confined for the most part to the Western Hemisphere." At least 103 undeclared hostilities have taken place outside the Western Hemisphere and 53 of them occurred before the 1900's.

Another point about these Presidential initiatives that should be noted is the fact that Congress had never until this year passed a law blocking or ordering a halt to any one of them. The question has come up many times and Congress has taken many votes on the issue since the birth of the Nation. For example, efforts were made within Congress to approve resolutions rebuking President Tyler because of his deployment of troops to Texas in 1844; President Polk for his similar deployment of troops into territory disputed with Mexico; President Grant for his sending of a naval force to the Dominican Republic to prevent internal disorder there, and numerous other deployments of American forces ranging from the stationing of troops in Siberia after World War I to the occupations of Haiti and Nicaragua in the 1920's and 1930's. Several votes were taken to restrict the deployment of American forces in these areas but none of the attempts were successful. For Congress to say that this longstanding interpretation may now be reversed, runs counter to the test of constitutional construction which the Supreme Court has applied in resolving other conflicts between Congress and the President.

The Supreme Court has applied the principle of usage as a determining factor in constitutional interpretation in at least two cases involving the power of the President in relation to Congress, *United States* v. *Midwest Oil Company*, 236 U.S. 459 (1915) and *Myers* v. *United States*, 272 U.S. 52 (1926). In Myers, the Court held that Congress could not shift gears after 73 years of a particular practice and start setting limitations on a Presidential practice which it had never before restrained, even though the practice had often been the subject of bitter controversy. The Court held:

> Nor can we concur . . . that when Congress after full consideration and with the acquiescence and long-practice of all the branches of the government, has established the construction of the Constitution, it may by its subsequent legislation reverse such construction. It is not given power by itself thus to amend the Constitution. 272 U.S. 175.

In his letter to me of January 12 of this year, Prof. Myers S. McDougal, perhaps the prominent authority on foreign relations law under the Constitution, agreed that our usage is an important guide to constitutional interpretation.

Professor McDougal wrote:

> The emphasis upon usage, as a test of Constitutionality, in our early article was based upon the notions that a people's genuine "constitution" is in how they live and cooperate under a basic charter and that the most important authority in a democratic community is in the expectations that people create in each other by such living and cooperation. The most important principle of interpretation in any legal system I have studied is that which requires examination of "subsequent conduct" as an index of contemporary expectation.

Thus did Professor McDougal reconfirm his reliance upon historical usage in reaching a conclusion published in 1945 that—

> Several distinct and well-established lines of authority establish the President's independent powers to make protective use of the armed forces of the United States, without awaiting a Congressional declaration of war or any other specific statutory authorization. 54 Yale L.J. 534, 608 (1945).

Though the Supreme Court does not appear to have addressed itself directly to the question of Presidential discretion in the use of Armed Force abroad during an ongoing hostility, at least six members of the current Supreme Court recognize the President is vested with a large area of independent and primary power in this general area. Justice Stewart and Justice White have expressed this view by writing that the Constitution endows the President with "a large degree of unshared power in the conduct of foreign affairs and the maintenance of our national defense." 403 U.S. 713, 729 (1971).

Justice Blackmun has added that:

> Article II of the great document vests in the Executive Branch primary power over the conduct of foreign affairs and places in that branch the responsibility for the Nation's safety. *Id.*, at 761.

Justice Marshall believes that:

> It is beyond cavil that the President has broad powers by virtue of his primary responsibility for the conduct of our foreign affairs and his position as Commander-in-Chief. *Id.*, at 741.

Also pertinent is a holding by Justice Rehnquist, joined by Chief Justice Burger and Justice White, which rests squarely upon the proposition that the executive branch is charged "with primary responsibility for the conduct of foreign affairs." 406 U.S. 759, 768 (1972).

In summary, the perspective of American history and of the real intent of the Framers of the Constitution comes close to justifying the statement made by then President Abraham Lincoln "that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the Nation."

This principle, which has been adhered to throughout the long history of the United States, means that the President can take defensive measures, without control by Congress, whenever in his judgment it is necessary to defend the important interests of the Nation. Mr. President, I do not believe that Congress can now change an arrangement which is so firmly imbedded into the Constitution by mere legislation. Congress cannot substitute a different plan of government by any process other than a constitutional amendment.

Mr. President, so that there may be a more complete discussion of the bill and the fundamental issues available to my colleagues, I ask unanimous consent that a West Virginia Law Review article prepared by my legal assistant, Mr. Terry Emerson, on war powers legislation shall be printed in the RECORD.

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

[Reprinted from Emerson, War Powers Legislation, 74 West Virginia Law Review 53 (1972)]

WAR POWERS LEGISLATION

I. INTRODUCTION

The Ninety-Second Congress has been marked by the unusual drama of a vigorous and persistent effort by the Legislative

Branch to confront the President, eyeball to eyeball, over the primary issues of war and peace.[1] Nowhere has the contest been joined in a more fundamental way, reaching to the very core of the division of powers between the two political branches, than in the bold thrust by several senators to codify the rules governing the circumstances in which the United States may go to and remain in war.[2]

No less than 19 senators have introduced or cosponsored one of five different bills or joint resolutions seeking to define the instances when the President may use or deploy the Armed Forces of the United States.[3] Taken singly or severally, these measures purport to demark the sole conditions under which the President can initiate military hostilities and to restrict his authority to continue any such hostility beyond a brief period unless and until he has obtained a new and specific authorization from Congress.[4]

It is the purpose of this article to examine the validity of such a legislative approach and, in so doing, to test its practical soundness.

II. DESCRIPTION OF WAR POWERS BILLS

First, it is necessary to know what the War Powers Bills attempt to do. Accordingly, we might start by reviewing the bill, S. 731, introduced by Senator Javits. The other measures then can be discussed in relation to how they differ from S. 731.

In its first section, the Javits bill provides that the "use of Armed Forces of the United States in military hostilities in the absence of a declaration of war [shall] be governed by the following rules. . . ."[5] These rules are (1) the President shall initiate military hostilities only in four prescribed circumstances;[6] (2) the President shall report promptly to Congress whenever military hostilities commence;[7] (3) in no event shall such hostilities be sustained beyond thirty days unless Congress enacts legislation to this end;[8] and (4) the President's authority to sustain such hostilities may be terminated short of thirty days by joint resolution of Congress.[9]

The four situations in which the President is limited to using the Armed Forces are:

"1. to repel a sudden attack against the United States, its territories, and possessions;

"2. to repel an attack against the Armed Forces of the United States on the high seas or lawfully stationed on foreign territory;

"3. to protect the lives and property, as may be required, of United States nationals abroad; and

"4. to comply with a national commitment resulting exclusively from affirmative action taken by the executive and legislative branches of the United States Government through means of a treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment, where immediate military hostilities by the Armed Forces of the United States are required."[10]

In addition, S. 731 creates a system by which legislative proceedings shall be expedited whenever a bill or resolution is introduced continuing any military hostility initiated in one of the above four instances or terminating any such hostility.[11] Finally, S. 731 expressly waives its application to hostilities undertaken before its enactment.[12]

By comparison, S.J. Res. 59, introduced by Senator Eagleton, limits the President to committing U.S. forces to action only in three of the four circumstances outlined in S. 731, ommitting any authority for the President to comply with a treaty commitment.[13] In fact, S.J. Res. 59 specifically mandates that no "treaty previously or hereafter entered into by the United States shall be construed as authorizing or requiring the Armed Forces of the United States to engage in hostilities without further Congressional authorization."[14]

Another distinguishing feature of the Eagleton resolution is found in its express declaration that "authorization to commit the Armed Forces of the United States to hostilities may not be inferred from legislative enactments, including *appropriation* bills which do not specifically include such authorization."[15]

In addition, S.J. Res. 59, unlike S. 731, includes a definition of the term "hostilities."[16] In this way, S.J. Res. 59 not only applies to "land, air, or naval actions,"[17] but also to the deployment of American forces abroad "under circumstances where an imminent involvement in combat activities with other armed forces is a reasonable possibility."[18] United States military advisors accompanying "regular or irregular" troops of a foreign country on any combat mission are similarly reached by the definition.[19]

If a governing Congressional authorization exists, of which the resolution itself appears to be one, the President is authorized to order American Forces into a third country with which we are not then engaged in hostilities when in hot pursuit of fleeing enemy forces or when a clear and present danger exists of an imminent attack on our forces by enemy units located in such third country.[20]

One remaining difference between the Javits bill and the Eagleton resolution is the requirement in S.J. Res. 59 that the President shall report periodically on the status of any authorized hostilities,[21] rather than solely at the onset of such actions.[22]

The third War Powers legislation, S.J. Res. 95 by Senator Stennis, is essentially similar to the provisions contained in S.J. Res. 59. The organization of sections is shifted somewhat, and Senator Stennis explicitly adds authority for the President "to prevent or defend against an imminent nuclear attack on the United States,"[23] thereby making precise what is broadly allowed under the other proposals. Finally, S.J. Res. 95 refers to "armed conflicts"[24] instead of "hostilities."[25]

But the main substantive difference between the two joint resolutions lies in the absence from S.J. Res. 95 of an explicit disavowal saying a national commitment cannot arise from a treaty[26] and its omission of the "hot pursuit" provision of S.J. Res. 59.[27] One change in the Stennis resolution which could become important in different circumstances is its non-application solely to the Vietnam conflict.[28] This could mean that if war should break out at some fresh spot in the world, the action would be within the scope of the proposal's limitation even though it had started before the proposal was enacted. But in the event an unexpected military venture should develop before S.J. Res. 59 became law, the action would not be limited by the statute.[29]

S. 1880,[30] introduced by Senator Bentsen, is almost identical with S.J. Res. 95, and the above summary is adequate to describe its provisions.[31]

The fifth War powers legislation is S.J. Res. 18, proposed by Senator Taft. It is most like S. 731 in that it defines four circumstances similar to those of that bill in which the President is restricted to using military force.[32] Unlike S. 731, however, the Taft resolution does not restrain the period of such hostilities to thirty days.[33] Nor does it include any procedure for the speedy consideration of legislation seeking to terminate the action.[34] Furthermore, S.J. Res. 18 extends solely to situations involving the commitment of forces "to combat,"[35] while, S. 731 may possibly be construed to reach a much broader category of troop movements and uses.[36]

Furthermore, S.J. Res. 18 does not contain any provision exempting prior hostilities from its restriction.[37] It does contain a detailed part authorizing the continued deployment of United States troops in Vietnam so long as necessary to accomplish a withdrawal of our forces and the assumption by South Vietnam of its own defense.[38]

III. CONSTITUTIONALITY OF WAR POWERS BILLS

A. Fundamental issues

It is immediately evident that each of the War Powers Bills purports to lay down rigid boundaries which supposedly will govern the situations when the President may and may not use United States military forces abroad.[39] Four of the five measures attempt to specify for how long our troops can be committed even in the limited situations where the President is allowed to act.[40]

But what is the source of Congressional authority over the decision of when and where to wage war? Does the Constitution unequivocally deposit the controlling power over military matters with Congress? Is there a line of court decisions clearly supporting the view that Congress can forbid the sending of troops outside the country? Does historical practice bear out the doctrine of Congressional supremacy over the use of force in foreign affair? Or are the War Powers Bills founded upon misplaced emotions and unproven postulates?

B. Textual arguments in support of legislation

The task of presenting arguments for the constitutional standing of the War Powers legislation has largely been assumed by Senator Javits. On March 5 of this year, he inserted a thorough brief on his bill, incorporating a discussion of the textual arguments and decided cases, into the Congressional Record.[41]

His brief argues that:

"Article I, Section 8 confers on Congress the major war powers—the powers to provide for the common defense; to declare war; to raise and support an army and navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia to execute federal laws, suppress insurrections and repel invasions; and to provide for organizing, arming, disciplining and governing the military—and the authority to make all laws necessary and proper to the execution of such powers."[42]

From this, the brief concludes "that the role of war policy formulation was intended for Congress and that the role of the President was to be the faithful execution of Congressional policy."[43] Thus, the executive power as Commander in Chief is seen as only a ministerial function,[44] derived from the experience of the framers of the Constitution with the conduct of the Revolutionary War.[45] Like General George Washington, whose commission from the Continental Congress insisted upon Congressional control of that war,[46] the "President, as Commander in Chief was intended to be the executive arm of Congress, carrying out its policy directives in the prosecution of military hostilities."[47]

The concept held by Senator Javits has received support from Professor Richard B. Morris, who recently assured the Senate Committee on Foreign Relations "it is a fair inference from the debates on ratification and from the learned analysis offered by the *Federalist* papers that the warmaking power of the President was little more than the power to defend against imminent invasion when Congress was not in session."[48]

Not all commentators agree. Professor Quincy 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."[49]

Footnotes at end of article.

It is clear the above statement is not principally a modern day concept, erected in awe at the vast scope of Presidential conduct over the last twenty years.[59] Professor W. W. Willoughby, author of a famous three volume work on constitutional law, reached the same finding in 1929. Willoughby declared that the power of the President to send United States forces outside the country in time of peace "when this is deemed necessary or expedient as a means of preserving or advancing the foreign interests or relations of the United States" is a "discretionary right constitutionally vested in him, and, therefore, not subject to congressional control."[51]

The late Professor Edward Corwin, who was selected by Congress to edit the congressionally sponsored *Constitution Annotated*,[52] also recognized the President's authority to commit military forces abroad on his own initiative.[53] In 1944, he wrote that this power "had developed into an undefined power—almost unchallenged from the first and occasionally sanctified judicially—to employ without Congressional authorization the armed forces in the protection of American rights and interests abroad whenever necessary."[54]

In truth, there exists much informed opinion from which one might doubt the restrictive view held by the advocates of War Powers legislation.[55] Contrary to the position asserted by a sponsor of one of these bills, there is no uniform viewpoint or visible weight of opinion establishing that "the proposals are constitutional."[56]

C. Cases used in support of legislation

Regardless of theoretical arguments, what have the courts decided? According to the brief offered by Senator Javits, they have held unfailingly that Congress may curb the Executive's employment of military force,[57] a claim we shall now test.

Three of the cases relied upon by the War Powers brief construe the application of early statutes applicable to the undeclared Naval War of 1798 to 1800, between the United States and France.[58] In point of fact, all of the cases were decided after the event, subsequent to the close of hostilities and had no bearing whatsoever on the conduct of an ongoing war.

The first of the cases, *Bas* v. *Tingy*[59] (also cited as *The Eliza*), involved the factual determination of whether the term "enemy," as used by Congress, referred to French privateers. The sole purpose of the Court's exercise was aimed at determining whether the owner of the *Eliza* had to pay salvage under a special federal law relating to the recapture of ships from the "enemy," rather than under a general statute which provided for payment of a much lesser amount. It is true three justices made sweeping references to the limits which Congress might set on hostilities, but these statements were in no way necessary to the decision of the case.[60]

Talbot v. *Seeman*,[61] decided a year later, involved the same statutes and included a declaration by Chief Justice Marshall to the effect that "the whole powers of war" were "vested in Congress."[62] Though heavily relied upon by sponsors of the War Powers legislation, the decision imposed absolutely no restriction upon the Executive's conduct of an ongoing war. What the Court would decide in the event Congress sought to shackle the President's discretion in the middle of an actual conflict presents a far different situation than the minor incident settled by this case.

The third case, *The Flying Fish*,[63] construed the meaning of a Federal law providing for forfeiture of American vessels employed in commerce with France. While the statute empowered American war ships to seize United States trading ships going into French ports, President Adams directed the navy to capture United States vessels both going into and coming from French ports. After the war was over, the Court held the seizure of a Danish vessel upon leaving a French port was unlawful.

Plainly the Court's discussion of the conflict between the Presidential order and the Act of Congress was dictum. Neither the President nor Congress had directed the seizure of neutral vessels. The capture of a Danish ship was not permitted under either claim of authority. Further, the case was not aimed at stopping the President from using American forces. It turned on the civil obligations of the commander of one American frigate, not on the respective roles of Congress and the President in the making of war.[64]

Another significant factor downgrading the relevance of the above three cases has been raised by Professor John Norton Moore. Speaking before the Senate hearings on War Powers legislation, Professor Moore advised the committee "these cases involved an issue squarely within a specific grant of authority to Congress. That is, the power 'to make Rules concerning Captures on Land and Water.' Under the circumstances it hardly seems surprising or relevant that a congressional act concerning rules for capture was preferred by the Court to a presidential interpretation of that act."[65]

Further question has been raised about this early line of cases by Secretary of State William P. Rogers, who reminded the Senate Committee on Foreign Relations that they were "decided before the doctrine of 'political questions' was formulated by Chief Justice Marshall in *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253 (1829) and . . . a similar case would probably never reach decision on the merits today."[66]

Indeed, one of the sponsors of S. 731 writes: "Also, it is conceded that should war powers legislation be enacted and result in a confrontation between the President and the Congress, there is little chance of judicial interpretation."[67]

Chronologically, the next decision relied upon in the War Powers brief is the *Prize Cases*,[68] a Civil War judgment regarding the legality of President Lincoln's blockade against the Confederacy. It is claimed this case proves "the Court's insistence upon Congressional authorization as the basis of Presidential war powers."[69] Yet Justice Grier, who wrote the Court's opinion, carefully explained the issue was not whether Congress had authorized the blockade, but whether the President, acting alone, possessed a right to make military action "on the principles of international law, as known and acknowledged among civilized States?"[70]

In upholding President Lincoln's right to meet the insurrection, the Court said: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority."[71] In the author's opinion, this case, far from indicating a superior role for Congress, points to the presence of a duty on the President to answer certain challenges against the nation without waiting for Congress to baptize them with a name.[72]

Another case cited in support of the War Powers bills is *Ex parte Milligan*,[73] in which the Court held that neither Congress nor the President could authorize the trial of a civilian before a military tribunal in a State which had been loyal to the Union during the Civil War. Though the case did involve limits on the power of the President, as well as on that of Congress, the Court's language might well be read as restricting the authority of Congress to impede the President's command of military decisions once hostilities break out. Four of the justices remarked upon the power of Congress in time of war as follows: "This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President as commander-in-chief."[74]

Another case which may actually enlarge upon the President's power, but has been cited as authority for the War Powers legislation,[75] is *United States* v. *Midwest Oil Company*.[76] This case considered the validity of a Presidential decree which withdrew from private acquisition all public lands containing petroleum. The President had issued the order even though Congress had passed a law making these same lands free and open to purchase by United States citizens.[77]

Nevertheless, the Court found that the Executive had been making similar orders contrary to Acts of Congress for a long time and, as a result, had acquired a power to do what it had been doing.[78] As we shall see in a later part of this article, the *Midwest* doctrine may thereby be applicable to support the practice of Presidents to commit United States troops overseas without Congressional direction.[79]

The remaining decision relied on in the War Powers brief is the "Steel Seizure"[80] case which arose out of President Truman's attempted takeover of the nation's major steel mills. Though the Court held, six to three, the President lacked authority on his own to take possession of private property, even on the ground of his role as Commander in Chief, it is plain the Court's majority treated the case as a domestic issue far removed from matters of day-to-day fighting in a theater of war.[81]

Justice Jackson appears to have expressed the mood of the Court aptly when he wrote:

"We should not use this occasion to 'circumscribe,' much less to contract, the lawful role of the President as Commander-in-Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to comand the instruments of national force, at least when turned against the outside world for the security of our society."[82]

Accordingly, it is believed the "Steel Seizure" case is mistakenly cited as being applicable to any situation regarding the use of United States troops outside the country for the protection of American interests. In the words of Secretary of State William P. Rogers, "the precise issue in that case was not the President's authority to conduct hostilities but the scope of his power over a clearly domestic matter—labor management relations."[83]

A some what analogous decision, inspiring a multitude of opinions and touching on the fringes of the President's War Powers, with no direct limit on his right to deploy forces, is the *New York Times* case[84] relating to the publication of the so-called Pentagon Papers. In this case, Justice Douglas, joined by Justice Black, aimed a thrust at the President by proclaiming "[n]owhere are presidential wars authorized."[85] But this view was not taken up by any other member of the Court's majority, nor is it decisive of the Court's ruling.

D. Source of President's powers over military and foreign affairs

Numerous authorities have described in detail the vast scope of the President's authority to employ force abroad.[86] In general, these observers point to four distinct powers of the President as the root of his independent authority. The powers are centered in his acquisition of all the "Executive Power" of a great and sovereign nation,[87] in his mandate to initiate and conduct foreign policy,[88] in his right and duty to "take care that the laws be faithfully executed,"[89] and in his designation as Commander in Chief.[90]

The very first sentence of article II of the Constitution reads: "The Executive Power shall be vested in a President of the United

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States of America." [91] As Solicitor General Erwin Griswold has recently noted, the grant of Executive power "is not a merely passive grant." [92]

It was Alexander Hamilton who first used this grant in arguing that the President's role in international matters is a positive one.[93] In fact, Hamilton claimed this clause had vested in the President the inherent powers held by any sovereign nation, including the right to form policy which "may, in its consequences, affect the exercise of the power of the Legislature to declare war." [94] The Hamiltonian concept of inherent powers over foreign affairs appears to have influenced Chief Justice John Marshall, who in 1800 while still a Member of the House of Representatives, conceived the familiar quote: "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." [95]

In 1971, Justice Harlan, Chief Justice Burger, and Justice Blackmun breathed fresh life into Marshall's characterization by writing: "From that time, shortly after the founding of the Nation, to this, there has been no substantial challenge to this description of the scope of executive power." [96] The reference by these three justices to the President's "constitutional primacy in the field of foreign affairs" was echoed in the same case by Justice Thurgood Marshall who declared: "[I]t is beyond cavil that the President has broad powers by virtue of his primary responsibility for the conduct of our foreign affairs and his position as Commander-in-Chief." [97]

All four justices cited with approval [98] the landmark case of *United States* v. *Curtiss-Wright Export Corp.*,[99] in which the Supreme Court had embraced the doctrine of "inherent" powers over the conduct of foreign affairs. There the nation's highest tribunal held it was dealing with "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress . . . ." [100]

The third pertinent power of the President is derived from his duty and right to execute the laws, an implicit authority which often is overlooked in contemporary discussions of the war powers. Professor Quincy Wright has remarked on this authority:

The duty to execute the laws is not limited to the enforcement of acts of Congress and treaties of the United States, but includes also "the rights, duties and obligations growing out of the constitution itself, our international relations, and all the protection implied by the nature of the government under the constitution." [101]

Corwin has described the implications of this doctrine as follows:

Thanks to the same capacity to base action directly on his own reading of international law—a capacity which the Court recognized in the *Neagle* case—the President has been able to gather to himself powers with respect to warmaking which ill accord with the specific delegation in the Constitution of the war-declaring power to Congress.[102]

Thus, the implied power of the President to interpret for himself the scope of our international obligations has enabled him to validly exercise powers which might otherwise appear to have been left to the proper authority of Congress.[103]

It has also been judicially determined that "the President's duty to execute the laws includes a duty to protect citizens abroad. . . ." [104] Thus said Justice Nelson, who sitting as a trial judge in 1880 upheld the authority of the President to take whatever action he determines proper to protect "the lives, liberty, and property" of the citizen abroad, without awaiting word from Congress.[105] The corollary right of a citizen abroad "to demand the care and protection of the Federal government over his life, liberty, and property" was subsequently recognized by the Supreme Court,[106] which expressly included this protection among the privileges and immunities of citizenship guaranteed by the Constitution.[107]

Not only is there persuasive domestic law on the issue of intervention abroad for the protection of citizens, but J. Reuben Clark, citing several international authorities, claims:

There is considerable authority for the proposition that such interposition by one state in the internal affairs of another state for the purpose of affording adequate protection to the citizens of one resident in the other as well as for the protection of the property of such citizens, is not only not improper, but, on the contrary, is based upon, is in accord with, and is the exercise of a right recognized by international law.[108]

In addition, the right of the nation to defend itself, as well as its citizens, is clearly established in both international and domestic law.[109]

A fourth source of the President's powers in the field of war making rests upon his designation as Commander in Chief.[110] This power has been succinctly defined to encompass "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 to be "exclusive and independent of Congressional power." [111]

What little judicial holdings there are on this power suggest it is largely an unfettered one. For example, in 1866, the Supreme Court pointedly stated: "Congress cannot direct the conduct of campaigns." [112] In 1897, the High Court affirmed a decision by the Court of Claims which held: "Congress cannot in the disguise of 'rules for the government' of the Army impair the authority of the President as Commander in Chief." [113]

E. Historical overview of President's war powers

Some twenty-five years ago, James Rogers, a former Assistant Secretary of State wrote: "It must be evident that the control of foreign policy and of the armed forces left to the President by the Constitution and reinforced by a century and half of augmentation, reduces the reservation of the power to 'declare war' to a mechanical step, sometimes even omitted." [114] What had happened to allow Rogers to assert such a bold claim? It was his discovery, unknown and unnoticed by most Americans, that "[t]he Executive has used force abroad at least a hundred times to accomplish national purposes without reference to Congress." [115]

This astonishing total was evaluated by Professor Corwin, who stated: "While inviting some pruning, the list demonstrates beyond peradventure the power of the President, as Chief Executive and Commander in Chief, to judge whether a situation requires the use of available forces to support American rights abroad and to take action in accordance with that decision." [116]

Clearly little wars are not "phenomena new to the national experience," [117] as some authorities, obsessed by the Vietnam war, would have us believe.[118] Indeed, by April of 1971, Senator Barry Goldwater informed the Senate War Powers hearing that research at his direction had "turned up 153 such actions." [119] The Goldwater study is a continuing one and a fresh review of the subject by the author in preparation for future testimony by Senator Goldwater reveals there are at least 192 [120] separate military engagements initiated by the Executive branch without a declaration of war from 1798 to 1971.[121]

The list seems particularly imposing since its total consists of hostilities where actual fighting took place, landings were made on foreign soil, or United States citizens were evacuated. No precedents are listed involving mere deployment of forces or draft simply to maintain an American presence, even if the deployment constituted an alert accompanied by an advanced state of readiness, except for some eight instances in which the risk of war was particularly grave. Nor have any military operations been offered as precedents which were subsequently disavowed or repudiated by the Executive.[122]

Are these precedents "minor undertakings" [123] and "short-lived" [124] as charged by some critics? Are the incidents confined to the Western Hemisphere and contiguous territory up to "the last twenty years or so," with the solo exception of the Boxer Expedition, as claimed by Henry Steele Commager? [125] The author believes the record stands for itself. We might note first that out of the 192 actions listed, 100 occurred outside the Western Hemisphere,[126] 85 of them taking place before "the last twenty years or so." [127] To which fact, we might add that 81 hostilities constituted actual combat operations or ultimatums tantamount to the use of force.[128]

Ninety-three engagements continued for longer than 30 days.[129] No more than 81 of the precedents,[130] less than half, could arguably have been initiated with the support of a legislative instrumentality. At least 43 of the precedents [131] were "calculated and ideological" [132] in the sense that they committed the United States outside its own territory in order to advance major, long-range national interests stretching far beyond the immediate protection of its citizens or territory.

Were the operations minor? In 1854, at a time when American forces did not exceed 50,000 men, Commodore Perry took 2,000 of them to the other side of the world in order to pressure Japan into reaching a commercial treaty with us.[133] Between 1899 and 1901, the United States used 126,468 troops to put down the Philippine Insurrection.[134]

After World War I had ended, we landed 5,000 soldiers at Archangel, Russia, and 9,000 more in Siberia, to aid the anti-Bolsheviks and to forestall Japanese expansionist plans in Siberia.[135] From 1926 to 1933, United States Marines fought more than 150 battles in Nicaragua and lost 97 men in seeking to foil what has been referred to as the "first attempt of Communism to infiltrate Latin America." [136]

In 1927, the United States had 6,000 troops ashore in China and 44 naval vessels in its waters.[137] In numerous other instances, the United States has put ashore hundreds and even thousands of forces on foreign lands.[138]

Put in the perspective of their own times, it is believed these interventions cannot be classified as "minor." Rather, the author would agree with the assessment of Professor Henry Monaghan that:

[W]ith ever-increasing frequency, presidents have employed that amount of force they deemed necessary to accomplish their foreign policy objectives. When little force was needed (*e.g.*, in our incursions in Latin America), little was used; when larger commitments were necessary, they too were forthcoming. Whatever the intention of the framers, the military machine has become simply an instrument for the achievement of foreign policy goals, which, in turn, have become a central responsibility of the presidency.[139]

Further, the author believes Professor Monaghan is correct in telling us that "history has legitimited the practice of presidential war-making." [140] In Monaghan's words, "A practice so deeply embedded in our governmental structure should be treated as decisive of the Constitutional issue." [141]

With this historical record in back of us, the principle laid down by the Supreme Court in *Midwest Oil* [142] gains added relevance. Here the Court had announced "that in deter-

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mining the meaning of a statute or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation." [143]

Certainly, the deployment of forces abroad on the initiative of the President alone is a "long-continued practice" extending backward far longer than the usage found to be valid in the *Midwest Oil* case.[144] Furthermore, Congress has known of and acquiesced in the President's usage for nearly a century and a half now, part of the time arguably in the face of a limiting Congressional statute.[145]

One instance when it is clear the President violated the terms of a Congressional statute attempting to govern his power to deploy troops abroad is the experience of the nation under the Selective Service Act of 1940.[146] The law expressly provided that no draftees were to be employed beyond the limits of the Western Hemisphere except in territories and possessions of the United States.[147]

Notwithstanding the Congressional prohibition, President Roosevelt deployed our troops, including draftees, to occupy Iceland and Greenland several months before World War II had been declared.[148] Iceland, however, is over 2,300 miles away from the closest point in the United States and is invariably placed in the section on Europe in any prominent world atlas. If nothing more, the incident shows Presidents will ignore Congressional limitations when they believe vital American interests are undeniably at stake.[149]

IV. POLICY CONSIDERATIONS

Regardless of the legality or illegality of the War Powers legislation, are the measures wise or proper from a practical standpoint? Can any Member of Congress, or Congress collectively, foresee all contingencies that may arise in the future? Might the War Powers legislation unwittingly turn the tables on its sponsors by exciting a situation or pushing a reluctant President into broader action than he wishes? A partial answer might be evident from the fact that many of the same authorities who have testified in favor of the general concept of War Powers legislation nevertheless have uttered grave concerns about the wisdom of these measures in practice.

For example, McGeorge Bundy warned "no single rule is likely to meet all our needs, and in particular I think it is dangerous to try to deal with the future by legislating against the past." [150] Alexander Bickel has confessed: "Codification seems to me difficult, heavily prone to error, quite possibly dangerous, and unnecessary." [151] William D. Rogers remarked: "I think the Javits proposal requiring the President in effect to get out if Congress does not act within 30 days is dangerous." [152]

These thoughts have been refined and expanded by others who are in outright opposition to passage of War Powers legislation.[153] Secretary of State William P. Rogers cautioned those who might conceive of the War Powers legislation as serving the end of peace by saying: "Moreover, requiring prior congressional authorization for deployment of forces can deprive the President of a valuable instrument of diplomacy which is used most often to calm a crisis rather than enflame it." [154]

To which he added:

"There is another consideration. To circumscribe presidential ability to act in emergency situations—or even to appear to weaken it—would run the grave risk of miscalculation by a potential enemy regarding the ability of the United States to act in a crisis. This might embolden such a nation to provoke crises or take other actions which undermine international peace and security." [155]

Professor James MacGregor Burns, the recipient of a Pulitzer Prize for his skills as a political historian, has gone further. He has testified that any legislation which would encumber the President's ability to respond and adjust to changing world situations as he determines proper will remove the one essential ingredient preventing World War III—flexibility.[156] Dr. Burns warned that imposing artificial restrictions on Executive discretion "may not lead to peace but to war, as foreign adversaries estimate that the United States will not respond to a threat to world peace because of legislative restrictions on the executive." [157]

The fear expressed by Dr. Burns was recently taken up by former Under Secretary of State George W. Ball, who is credited with being a dove in the high ranks of the Johnson Administration. Mr. Ball reminds us that the Neutrality Acts adopted in the aftermath of World War I "very probably" impeded the United States from taking firm steps which would have averted World War II.[158] This illustration leads Mr. Ball to ask how does one draft a statute that will make it possible for Congress to play a role "in shaping fundamental decisions that may lead to war without inhibiting the President in doing whatever is necessary" to avert some future catastrophe parallel to World War II.[159]

Senator Barry Goldwater sounded the same alarm in his appearance before the War Powers hearings. He charged the legislation "will undermine the credibility of our most basic defense agreements such as NATO. With one swipe, our 42 defense pacts will be chopped into 30-day wonders, if that." [160]

Senator Goldwater argued: "Thereby, the proposed bill will place all our treaty obligations in a state of permanent doubt. No ally can ever know if the United States will stand by it for more than 30 days; and even then, it cannot be certain whether Congress will shut off our aid sooner." [161] But there is another side to the coin. If Congress has the right to legislate concerning the rules of war as is argued by the sponsors of War Powers legislation,[162] Congress also possesses the power to order the President into broader hostilities than he wishes. This development could actually occur under a provision of these bills in their present form which establishes a procedure for expedited consideration by Congress of legislation designed to sustain hostilities beyond 30 days.[163]

The danger can be tested against actual history. For example, if the War Power legislation had been in effect at the time of the Cuban missile crisis,[164] Congress would have been required to act swiftly on the matter of continuing the deployment of forces in the Caribbean once the 30-day period possibly allowed by the legislation had expired. Under the telescoped parliamentary procedure created by the legislation, this vote likely would have occurred (Congress then having been in session) within a matter of a few days. Thus, Congress would have voted right at the peak of emotional excitement and public concern over the missile threat.

One can easily suppose in the setting of the time—with enemy missiles being aimed at cities holding 80 million American citizens, with reports arriving of attacks on American reconnaissance planes, and with the killing of an American pilot over Cuba [165]—that a majority in Congress with one eye on elections only weeks away, would have favored legislation directing an all-out bombardment of Cuba or even an invasion.

As Senator Goldwater observed: "Those who look to Congress as the ultimate haven of peaceful thinking might thumb through the pages of Robert Kennedy's short manuscript on the Cuban Missile Crises." [166] In this book, the late Senator Kennedy recounts that of all the deliberations which preceded his brother's broadcast to the nation on the crisis, his session with the leaders of Congress "was the most difficult meeting." [167]

According to Robert Kennedy:

"Many Congressional leaders were sharp in their criticism. They felt the President should take more forceful action, a military attack or invasion, and that the blockade was far too weak a response. Senator Richard B. Russell of Georgia said he could not live with himself if he did not say in the strongest possible terms how important it was that we act with greater strength than the President was contemplating.

"Senator J. William Fulbright of Arkansas also strongly advised military action rather than such a weak step as the blockade." [168]

In light of this illustration, Senator Goldwater asks: "Is it not possible Congress might, when confronted with dramatic pressure for making an immediate decision, vote in favor of a military strike? Are the Members of Congress more immune to emotional, impulsive reactions than other humans?" [169]

In the event Congress should decide to steer our nation into expanded hostilities, the authors of War Powers legislation would leave the President no exit. Their whole argument for the power of Congress to pass such legislation is squarely based upon the proposition that Congress controls the War Powers and that the President must faithfully carry out the directives enacted by Congress.[170] According to the brief offered by Senator Javits, "the President has no right to contravene such legislation." [171]

There is another problem. What about the ability of the President to respond to specific, sudden emergencies? Is the assurance of Irving Brant correct that the War Powers legislation "does not interfere in the least with the handling of any emergency, from minor property damage to nuclear holocaust?" [172]

Perhaps reference to some actual situations will provide an answer. Oddly enough, the proposal introduced by a Senator from New York, himself Jewish, as well as the other War Powers legislation, would prohibit the United States from acting to defend the state of Israel. This result occurs because under the Javits bill, the President may act to comply with a national commitment only if the commitment results exclusively from a "legislative instrumentality specifically intended to give effect to such a commitment. . . ." [173]

But this country has no legislative commitment to defend the security of Israel. There is no treaty or convention or resolution authorizing the United States to assist in preserving Israel's independence.[174] Senator Goldwater has set the scene:

"No matter that Arab fanatics may be seeking to make good on their aim of shoving the Israelis into the sea. No matter that approximately 20,000 Soviet personnel may be manning SA–3 missile sites and advanced jet fighters while massive Egyptian tank forces mount an invasion on disputed Sinai territory. . . . Regardless of the humanitarian exigencies and the dire consequences on European security, the War Powers Bill prohibits an immediate response by the United States to forestall an Arab conquest of Israel." [175]

Senator Goldwater has added:

"Oh yes, we might rush in Air Force transport planes to whisk our own citizens out of danger. We might even send a contingent of marines into cities where our embassies and legations are located to aid them.

"But when our forces are called upon to act for broader purposes—for reasons of vital strategic interests such as saving another nation's people from annihilation—the war powers bill will halt our forces short. This would be carrying out a national commitment." [176]

Nor is the scenario described by Senator Goldwater an implausible one. The United States has already intervened once in the Arab-Israeli crisis in a way that would be specifically curbed under any of the pending War Powers legislation.[177] This incident occurred in June of 1967, during the six-day Middle East war, after President Johnson

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had heard over the hotline that Russia "had reached a decision that they were prepared to do what was necessary, including using the military" to stop the advance of Israeli troops into Arab territory.[178]

As President Johnson understood it at the time "unless the Israelis halt operations within the next five hours the Soviets will take necessary action, including military . . . ." In response President Johnson reports he ordered the U.S. 6th Fleet to move to within 50 miles off the Syrian coast as "a sign that the Soviet Union would have to deal with us." [179]

Though the preceding illustration refers solely to Israel, the identical problem exists under the Javits bill in the case of any other country with which the United States has no national commitment sanctified by action of Congress.

Another situation in which the President would be barred from taking independent action under most, if not all, of the War Powers legislation is the deployment of troops or equipment to back up United States foreign policy objectives in times of great crises, such as the recurrent Communist pressures on free Berlin.[180] In this connection, the Department of the Navy has compiled a list of what it calls 55 "wars/near wars" since 1946, in which naval units were involved, alerted, or redeployed.[181] All of these movements at the initiative of the President would be prohibited under the War Powers legislation to the extent that they back up a national commitment to a foreign country, with the single exception of commitments specifically dependent upon a treaty or convention which could be implemented for 30 days under the Javits bill alone.[182]

One more example, pinpointing a need for broad Executive discretion, is the 1964 Congo rescue effort which saved 2,000 persons, including about 60 Americans, who were being held hostage by Congolese rebels.[183] Former Secretary of State Rusk has described the incident:

"On one occasion, a large number of Europeans, including the staff of the American Consulate and other American private citizens, were being held as hostages by a savage group in the Eastern Congo called Simbas. Private negotiations with the Simbas over a period of weeks had failed to release the hostages. Threats of execution and brutal torture mounted. We and the Belgians decided (with the approval of the government of the Congo) to drop Belgian paratroopers into the area by American aircraft in order to rescue these hostages who were in a truly desperate situation. There could not have been action by the Congress without alerting the Simbas as to what was up; the result would almost certainly have been the summary execution of American Consular Officers and a considerable number of American citizens.[184]

As compelling as the humanitarian interests are in the Congo situation, it is doubtful the joint rescue mission would have been permitted under the rigid lines set by the War Powers legislation. Insofar as the military operation affected 97% of the persons evacuated, it would not have been legal under these proposals because the individuals were not United States citizens.[185] Of course, if the proposals could be construed broadly enough to permit the President to employ troops in another country under the guise of protecting Americans abroad, even though the main purpose or result reaches far beyond that end, the President can initiate the use of force in nearly every conceivable situation without running afoul of the proposals. Today United States citizens can be found in every nation of the world, including Communist China, a fact which would enable the President to employ force abroad at any place he determines necessary under the excuse of protecting our citizens.

This discussion should not be concluded without referring to a fundamental question posed by some critics of Presidential initatives. The flavor is caught in the statement by Henry Steele Commager who claims that, with the exception of the Civil War and perhaps the Korean War:

"[T]here are no instances in our history where the use of war making powers by the Executive without authority of Congress was clearly and incontrovertibly required by the nature of the emergency which the nation faced but that on the contrary in almost every instance the long run interests of the nation would have been better promoted by consultation and delay.[186]

It is difficult to answer matters of subjective judgment. But we know of one instance in which Secretary Rusk believes "consultation and delay" would have led to the massacre of some 2,000 human beings.[187] Would these persons and their families conclude the use of military forces was not clearly required?

If you will ask the citizens of the Southwest whether they think it was necessary for President Tyler and Polk to deploy American troops in Mexican territory to protect the people of what was then the independent Republic of Texas and what is now the State of Texas,[188] you might get a pretty vocal and unanimous reply to the question. Or if you will consider the stakes riding on a swift American response to Russian brinkmanship during the Cuban missile crisis, when inaction would have left the United States impotent to remove missiles which were being aimed at American cities holding 80 million citizens,[189] most would agree "second-thoughts" would have made a terrible difference to the well-being of these 80 million citizens.

The truth is that we just cannot predict what chain of events might have been instituted if we had failed to act in each of these 192 military incidents. To study them under a microscope might be worthwhile for a scholar located in an ivy-covered classroom, but for a President, faced with 20th Century reality, even a week's delay might see the overrun of an important friendly nation or the rise of an irremovable threat to national safety.

V. CONCLUSION

The verdict of history, reinforced by occasional judicial pronouncements, convinces the author that the President possesses a broad authority of independent initiative over the use of military force outside the United States. It is settled beyond question under both domestic and international law, that he can deploy fleets, land troops, order airlifts, or conduct battles in order to protect or rescue United States citizens and officials, together with their property.[190] It is equally obvious he can employ the military forces against an outside enemy who attacks United States territory or poses an imminent threat of such an attack.[191]

The author believes any legislation which seeks to lay down rules restricting in advance the President's ability to use military forces in these circumstances is illegal. The Constitution does not allow Congress to prohibit the President from acting in these defensive situations; nor does it permit Congress to impose statutory limitations on the period of time during which the President may act in these conditions. To this extent, the War Powers legislation is clearly unconstitutional.[192]

The President possesses authority which stretches far beyond that of making an *ad hoc*, limited response to an emergency where there is a widely recognized and immediate threat to the safety of United States citizens or the intergity of United States territory. Whenever the President, as the primary author for foreign policy and the exclusive Commander in Chief of United States forces determines there is a future danger to the ultimate preservation of the United States and its citizens which is highly probable of arising either as a direct or indirect result of a present crisis, he may commit United States forces on his own authority in any way he deems fit for the purpose of defending the future security of this country and its two hundred and ten million citizens.[193]

In the highly complex, interrelated society of the Twentieth Century, where the sudden domination of an ocean strait, or control of a critical resource, or deployment of a radically new weapon, might install an aggressive nation in a position of exclusive superiority from which it might dictate terms to all other countries, the Eighteenth Century concept of repelling "sudden attacks" must be broadened to encompass defense against threats which are probable of becoming irremovable once allowed to develop unchallenged out of present moves. The crucial test in the modern world has to be whether the damaging consequences to United States security are equally grave and equally likely to happen in the natural flow of events as the "sudden attack" which the Framers of the Constitution comprehended in their personal experience.

It is strange indeed that many of the same political liberals who make highly moving appeals for expanding the scope of federal jurisdiction and obligation on behalf of urban relief, hyphenated-Americans, and other social-welfare causes, deny their own preachments about a "living Constitution" when it comes to the President's ability to defend America's freedoms. Their unbending reliance upon brief debates at the Constitutional Convention as conveying the final meaning of the clause "to declared War" marks these commentators as the "strict constructionists" of all time.[194]

The advocates of War Powers legislation have, in general, allowed their repulsion over the tragedy of Vietnam to misguide them into a strained and rigid interpretation of the Constitution which is both wrong and unrealistic. Weaving through almost all testimony in support of War Powers legislation is the theme that there must not be "another Vietnam." [195] In fact, when Senator Javits introduced his bill, his opening sentence declared: "[T]he most compelling lesson of the 1960's for the United States is our need to devise procedures to prevent future undeclared wars as in Vietnam.[196]

The ironical error about using Vietnam as the reason for curbing Presidential initiatives is that Congress itself has been deeply involved with expansion of the Vietnam conflict each step of the way.[197] Senator Goldwater has documented at least 24 acts of Congress supporting our continued presence in Vietnam, both before and after the much discussed Gulf of Tonkin Resolution.[198]

This view has received judicial verification as well. The U.S. Court of Appeals for the Second Circuit ruled on April 20, 1971, that: "The Congress and the Executive have taken mutual and joint action in the prosecution and support of military operations in Southeast Asia from the beginning of those operations." [199]

In concluding, the author does not wish to leave the impression he believes Congress and the public are helpless to influnce decisions on current and prospective foreign military policies. For one thing, a free press admonishing and criticizing the policy of an Executive or the Congress can mobilize public opinion in sufficient strength to change the course of action. Vietnam shows us that much.

For another, Congress can refuse to raise an Armed Force of the size an "activist" President requires to intervene at several points across the globe. As a foreshadow of events to come, the 92nd Congress has for the first time set an annual numerical ceiling on the total authorized active duty strength levels of each of the regular forces.[200]

Next, Congress can and must make indi-

Footnotes at end of article.

vidual determinations about specific military actions as they develop every time it votes on appropriations to continue these actions.[201] In this manner, Congress will be making its decision in the setting of the precise emergency or problem at hand. It will not be trying to erect rules for every kind of predictable and unpredictable event to come in the long-range future, but will be dealing with known facts and a specific request for a certain number of dollars or a certain number of helicopters, fighter aircraft, or other weapons.[202]

Finally, both Congress and the President can adhere to the Constitutional expectation that the two political branches of our government must spend an enormous amount of time working with each other to avoid the possibility of an impasse at moments of crisis. The Secretary of State, Secretary of Defense, and other ranking decisionmakers in each administration must be willing to meet with committees and subcommittees of Congress hundreds of times if necessary trying to work together.

For its part, Congress must have the sense of mind and political courage to shape a recognizable position from which the President can be guided. This means the pertinent committees must develop an almost unanimous view on important issues, so that the President can clearly know the position of the Senate, or the House, as a corporate body, rather than having to choose from among the individual points of view of a hundred or so different members. Thereby, the two branches could better move in unison according to the true anticipation of our Founding Fathers.

FOOTNOTES

[1] The Senate alone has spent parts of 61 days of Floor debate on issues affecting the President's war making machinery in the first 143 legislative days of the 92nd Congress. These deliberations centered primarily around H.R. 6531, the Military Draft Extension Bill (45 days), and H.R. 8687, the Military Procurement Authorization Act (13 days).

[2] *See* S. 731, S. 1880, S.J. Res. 18, S.J. Res. 59, and S.J. Res. 95, and 92d Congress, 1st Sess. (1971). *But cf.* H.J. Res. 1, 92d Cong., 1st Sess., passed by the House of Representatives on August 2, 1971, in which "Congress reaffirms its powers under the Constitution to declare war," without specifying any rules for the conduct of military hostilities.

[3] Mr. Javits has introduced S. 731 for himself, Mr. Bayh, Mr. Mathias, Mr. Packwood, Mr. Pell, Mr. Spong, Mr. Weicker and Mr. Williams. Mr. Bentsen has introduced S. 1880 for himself and Mr. Byrd of W. Va. Mr. Taft has introduced S.J. Res. 18. Mr. Eagleton has introduced S.J. Res. 59 for himself, Mr. Inouye, Mr. McGovern, Mr. Montoya, and Mr. Stevenson. Mr. Stennis has introduced S.J. Res. 95 for himself, Mr. Mansfield, and Mr. Roth. On December 6, 1971, after this article was submitted, Senators Javits, Stennis, Eagleton, and Spong agreed to introduce a comprehensive redraft of S. 731. The substantive provisions of this bill, S. 2956, are essentially the same as those in S. 731, with the addition of language borrowed from S.J. Res. 59 providing that authority to use the Armed Forces shall not be inferred from a treaty or appropriation act. S. 2956 was ordered favorably reported by the Senate Committee on Foreign Relations the next day, December 7.

[4] See discussion pp. 54–56, *infra*.

[5] S. 731, *supra* note 2, at 1, lines 3–5.

[6] *Id.* at 1–2, lines 7–13.

[7] *Id.* at 2, paragraph B, § 1.

[8] *Id.* at 2, paragraph C, § 1.

[9] *Id.* at 2–3, paragraph D, § 1.

[10] *Id.* at 1–2, paragraph A, § 1.

[11] *Id.* at 3, § s.

[12] *Id.* at 4, § 3.

[13] S.J. Res. 59, *supra note* 2, pp. 4-5, § 3.

[14] *Id.* at 2-3, § 1.

[15] *Id.* at 3, lines 9-12, § 2 (emphasis added).

[16] *Id.* at 6-7, § 6.

[17] *Id.* beginning at line 25, p. 6, and ending on line 2, p. 7.

[18] *Id.* at 7, lines 2-6.

[19] *Id.* at 7, lines 6-11.

[20] *Id.* beginning at line 12, p. 3, and ending on line 7, p. 4, § 2.

[21] *Id.* at 5, lines 13-19, § 4.

[22] See note 7, *supra*.

[23] S.J. Res. 95, *supra* note 2, at 2, paragraph B, § 2.

[24] *Id.* at 5-6, § 7.

[25] See S.J. Res. 59, note 16 *supra*.

[26] See S.J. Res. 59, note 14 *supra*.

[27] See S.J. Res. 59, note 20 *supra*.

[28] S.J. Res. 95, *supra* note 2, at p. 5, § 6.

[29] S.J. Res. 59, *supra* note 2, at p. 7, § 7. Nor would the fresh hostility be covered by S. 731. See note 12 *supra*.

[30] *Supra* note 2.

[31] See text accompanying note 16 to note 29 *supra*.

[32] S.J. Res. 18, *supra* note 2, at 2-3, paragraph 1-4, Part I. And see note 10 *supra*.

[33] *Cf.* S. 731, *supra* note 8.

[34] *Cf.* S. 731, *supra* note 11.

[35] S.J. Res. 18, *supra* note 2, at 2, line 10, Part I.

[36] S. 731 refers only to "military hostilities" and does not specify whether a purpose of combat is necessary to constitute a hostility. See text accompanying note 5 to note 12 *supra*. *But cf.* remarks of Senator Javits when he introduced his bill in which he refers to "combat hostilities" and "combat actions." 117 Cong. Rec. (daily ed.) S1204-S1206 (Feb. 10, 1971).

[37] *Cf.* S. 731, *supra* note 12.

[38] S.J. Res. 18, *supra* note 2, at 3-4, Part II.

[39] *See* text accompanying note 5 to note 39 *supra*, note 40 *infra*.

[40] *Id.*

[41] *See A Brief on S. 731, to Make Rules Respecting Military Hostilities in the Absence of a Declaration of War*, 117 Cong. Rec. (daily ed.) at S2527–S2531 (March 5, 1971), and *see* Javits, *supra* note 36.

[42] *Brief, supra* note 41, at S. 2523.

[43] *Id.*

[44] *Id.*

[45] *Id. See also* Javits, *supra* note 36, at S. 1205–S 1206.

[46] *See* exhibit 1, Javits, *supra* note 36, at S 1206. *But* cf. view of Professor John Norton Moore that "reliance on the experience under the Articles of Confederation seems a frail reed for interpreting a Constitution promulgated in large measure as a result of dissatisfaction with the experience under the Articles. *Hearings on War Powers Bill Before the Senate Comm. on Foreign Relations*, 92d Cong., 1st Sess. (1971), testimony of Professor Moore inserted in the Cong. Rec. by Senator Goldwater, 117 Cong. Rec. (daily ed.) S6469 (May 10, 1971). Moore's position applies with equal force to the Continental Congress.

[47] *Brief, supra* note 41, at S 2539. The textual arguments of the Javits brief are reminiscent of the battle Jefferson and Randolph lost to Washington and Hamilton over the power of the President to "declare" on "the question of war or peace." When President Washington boldly issued a proclamation of neutrality on April 22, 1793, during the outbreak of war between France and Great Britain, it was a clear defeat for the position argued by Jefferson that only Congress could proclaim neutrality. To Jefferson, since Congress alone had the power to declare war, it alone had the power to declare we were not at war. Washington's rejection of Jefferson's narrow reasoning is generally credited with establishing early the principle of Presidential primacy in the making of foreign policy. See C. ROSSITER, ALEXANDER HAMILTON AND THE CONSTITUTION 84–85 (1964).

[48] *Hearings, supra* note 46. *See* testimony of Professor Richard B. Morris inserted in the Cong. Rec. by Senator Javits, 117 Cong. Rec. (daily ed.) S3359 (March 16, 1971). And *see* testimony of Professor Henry Steele Commager inserted in the Cong. Rec. by Senator Javits, 117 Cong. Rec. (daily ed.) S3353–S3354. *See generally* Note, *Congress, the President and the Power to Commit Forces to Combat*, 81 HARV. L. REV. 1771 (1968).

[49] Wright, *The Power of the Executive to Use Military Forces Abroad*, 10 VA. J. INT'L, 54 (1969).

[50] Wright took the same position in 1920. *See* Wright, *Validity of the Proposed Reservations to the Peace Treaty*, 20 COL. L. REV. 134–36 (1920).

[51] 3 W. WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES, 1567 (2d ed. 1929).

[52] E. CORWIN, CONSTITUTION ANNOTATED (1952).

[53] Another well-known constitutional authority states the President "possesses the organizational authority to resort to the use of force to protect American rights and interests abroad and to fulfill the commitments of the nation under international agreements." B. SCHWARTZ, COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES, Part I, Vol. II at 196 (1963).

[54] Corwin, *Who has the Power to Make War?*, N.Y. Times, July 31, 1949 at 14 (Magazine).

[55] *Hearings, supra* note 46. *See* testimony of Moore at S6469–S6470; testimony of Secretary of State William P. Rogers inserted in the Cong. Rec. by Senator Goldwater, 117 Cong. Rec. (daily ed.) S7196–S7201 (May 18, 1971); and testimony of the Honorable George W. Ball inserted in the Cong. Rec. by Senator Goldwater, 117 Cong. Rec. (daily ed.) S12619–S12621 July 30, 1971).

Other recent statements recognizing full plenary power in the President to conduct military operations are: remarks by Solicitor General Erwin N. Griswold inserted in the Cong. Rec. by Senator Goldwater, 117 Cong. Rec. (daily ed.) S12967–S12969 (Aug. 3, 1971); Eberhard P. Deutsch, *The President as Commander in Chief*, 57 ABA J. 27–32 (Jan. 1971); Henry M. Pachter, *Reflections of Unilateral Intervention*, prepared for Foreign Military Commitments, FORENSIC Q., 135–38 (May 1969); and *Congress, the President, and the War Powers, Hearings Before the Subcomm. on National Securtiy Policy and Scientific Developments of the House Committee on Foreign Affairs*, 91st Cong. 2d Sess. (Comm, Print 1970), testimony of Dr. W. T. Mallison at 30–39, testimony of Professor Abram Chayes at 135–38, and testimony of William H. Rehnquist at 210–16, 232, and 235.

[56] Spong, *Can Balance be Restored in the Constitutional War Powers of the President and Congress?*, 6 U. RICH L. REV., at 27 (1971).

[57] See *Brief, supra* note 41, at S2529–S2530.

[58] See Appendix "A," *infra*, at 88.

[59] 4 U.S. (4 Dallas) 36 (1800).

[60] *Id.* at 39–45.

[61] Also cited as The Amelia, 5 U.S. (1 Cr.) 1 (1801).

[62] *Id.* at 28.

[63] Also cited as Little v. Barreme, 6 U.S. (2 Cr.) 170 (1804).

[64] *Id.* at 179. In fact, there never has been any Supreme Court holding in time of war which shackled the President's ability to use the forces at his disposal to carry on that hostility. See Ratner, *The Coordinated War-making Power—Legislative, Executive, and Judicial Roles*, 44 So. CAL. L. REV. at 486 (1971).

[65] *See* Moore, *supra* note 46, at S. 6469. *And see* U.S. Const., Art. I, § 8.

[66] *See* Rogers, *supra* note 55 at n.45, S 7201.

[67] Spong, *supra* note 56, at 27. The Supreme Court has consistently refused to tackle cases directly challenging the legality of Presidential military decisions during an on-going war. For example, the Court has turned away every request for a decision on the validity of the Vietnam conflict that has been made

of it. See *Berk* v. *Laird*, 443 F. 2d 1039 (1971); *cert. denied* 40 U.S.L.W. 3166 (Oct. 11, 1971); Massachusetts v. Laird, *motion for leave to file complaint denied*, 400 U.S. 886 (1970); Mora v. McNamara, *cert. denied*, 389 U.S. 934 (1967); Luftig v. McNamara, *cert. denied*, 387 U.S. 945 (1967); and Mitchell v. United States, *cert. denied*, 386 U.S. 972 (1967).

There are earlier cases which indicate the Supreme Court will not consider issues arising out of any statute purporting to regulate the President's deployment of troops. In *Mississippi* v. *Johnson* the Court held it had no power to restrain acts of either Congress or the President regarding the use of troops. 71 U.S. 475 (1866). Some half century later the Court held that the propriety of what may be done in the exercise of the power to conduct foreign relations "is not subject to Judicial inquiry or decision." Oetjen v. Central Leather Co., 246 U.S. 297, 302 (1918).

Then in 1950, the Court stated:

"Certainly it is not the function of the Judiciary to entertain private litigation—even by a citizen—which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region . . . The issue tendered . . . involves a challenge to conduct of diplomatic and foreign affairs, for which the President is exclusively responsible."

Johnson v. Eisentrager, 339 U.S. 763, 789 (1950).

Two recent articles which conclude the Court will not entertain the issue of the President's war-making authority are (1) Note, *The Supreme Court as Arbitrator in the Conflict Between Presidential and Congressional War-Making Powers*, 50 Boston U. L. Rev. 78 (1970), and (2) *Undeclared War and the Right of Servicemen to Refuse Service Abroad*, 10–16, Legislative Reference Service, Library of Congress (Nov. 30, 1970). *But cf.* Tigar, *Judicial Power, The 'Political Question Doctrine,' and Foreign Relations*, 17 U.C.L.A. L. Rev. 1135 (1970).

In light of the probable application of the "political question" doctrine to the war powers legislation, Senator Goldwater has charged: "[I]t may incite one of the gravest Constitutional crises in American history." Testimony of Senator Goldwater before Hearings on War Powers Bills, *supra* note 46, inserted in 117 Cong. Rec. (daily ed.) S5637–S5647 (April 26, 1971) at S5637.

[68] 67 U.S. (2 Black) 635 (1863).

[69] See *Brief*, *supra* note 41, at S2529.

[70] Prize cases, 67 U.S. (2 Black) 635, 671 (1863).

[71] *Id.* at 668.

[72] Professor Schwartz claims: "The language of the high Court in the *Prize Cases* is broad enough to empower the President to do much more than merely parry a blow already struck against the nation. Properly construed, in truth, it constitutes juristic justification of the many instances in our history (ranging from Jefferson's dispatch of a naval squadron to the Barbary Coast to the 1962 blockage of Cuba) in which the President has ordered belligerent measures abroad without a state of war having been declared by Congress." B. Schwartz, The Reins of Power at 98 (1963). And see text accompanying note 114 to note 149 *infra*.

[73] 71 U.S. (4 Wall.) 2 (1866).

[74] *Id.* at 139.

[75] See *Brief*, *supra* note 41, at S 2530.

[76] 236 U.S. 459 (1915).

[77] *Id.* at 466–67.

[78] *Id.* at 460–70, 474.

[79] See text accompanying note 142 to note 149 *infra*.

[80] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

[81] *Id.* at 587.

[82] *Id.* at 645.

[83] See Rogers, *supra* note 55, at S 7198.

[84] New York Times Co. v. United States, 403 U.S. 713 (1971).

[85] *Id.* at 722.

[86] See text accompanying note 49 to note 56 *supra* pp. 8–9. And see note 55 *supra*.

[87] E. Corwin, President: Office and Powers 220 (3d rev. ed. 1948).

[88] See text accompanying note 96 to note 100 *infra*.

[89] See text accompanying note 101 to note 108 *infra*.

[90] See text accompanying note 110 to note 113 infra.

[91] U.S. Const., Art. II, § 1.

[92] Griswold, *supra* note 55, at S 12968.

[93] See Corwin, *supra* note 87, at 217–20.

[94] Cited in Corwin, *supra* note 87, at 218.

[95] Annals, 6th Cong., col. 613 (1800).

[96] New York Times Co. v United States, 403 U.S. 713 (1971) *supra* note 84, at 756. And see separate dissent by Justice Blackmun at 761.

[97] *Id.* at 741.

[98] *Id.* at 741–42, 756.

[99] 299 U.S. 304 (1936).

[100] *Id.* at 319–20.

[101] Wright, *supra* note 50, at 134–35.

And see *In re Neagle*, 135 U.S. 1, 64 (1889), cited by Wright in discussion.

[102] E. Corwin, *supra* note 87, at 240–41.

[103] Corwin has also written:

But the President may also make himself the direct administrator of the international rights and duties of the United States, or of what are adjudged by him to be such, without awaiting action either by the treaty-making power or by Congress, or by the courts. *Id.* at 239.

W. Willoughby observed:

It is also to be noted that the powers constitutionally vested in the President with regard to the control of the foreign relations of the United States makes it possible for him to bring about a situation in which, as a practical proposition, there is little option left to Congress as to whether it will or will not declare war or recognize a state of war as existing. W. Willoughby, *supra* note 51, at 1558.

[104] *See* Q. Wright, The Control of American Foreign Relations 306 (1922); Durand v. Hollins, 8 F. Cass. 111 (4 Blatch 451, CCSD NY 1860).

[105] Durand v. Hollins at 454.

[106] *See* The Slaughter-House Cases, 83 U.S. 36, 79 (1872).

[107] U.S. Const. amend. XIV.

[108] J. Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, 25 (3d rev. ed. with supp. appendix up to 1933: 1934).

[109] *See* Q. Wright, *supra* note 104, at 307; Spong, *supra* note 56, at 24; Moore, *The Lawfulness of Military Assistance to the Republic of Viet-Nam, The Vietnam War and International Law;* Am. Soc'y of Int'l L. 237 (1968); *id.* at 583–603; Memorandum by U.S. Dept. of State, *The Legality of United States Participation in the Defense of Viet-Nam*, (March 4, 1966); B. Schwartz, *supra* note 72, at 175.

[110] U.S. Const. art. II, § 2, cls. 1.

[111] Q. Wright, *supra* note 50, at 134; W. Willoughby, note 51 *supra*, at 1567.

[112] *Ex parte* Milligan, 71 U.S. (4 Wall) 2 at 139. *See also* holding by Court of Claims that "In time of war, the Commander in Chief has the same powers as other civilized governments, and the exercise of them needed no ratification to give them effective force." The Court was speaking of the *undeclared* war in the Philippines. Warner, Barnes and Co. v. United States, 40 Ct. Cl. 1, 32 (1904).

[113] Swaim v. United States, 28 Ct. Cl. 173, 221, *aff'd* 165 U.S. 553 (1897).

[114] J. Rogers, World Policing and the Constitution 55 (1945).

[115] *Id.* at 56.

[116] E. Corwin, *supra* note 54, at 14.

[117] *See* R. Dupuy and W. Baumer, The Little Wars of the United States preface (1968).

[118] *See*, e.g., Commager, *supra* note 48, principally at S 3355, and Morris, *supra* note 48, at S 3359.

[119] See Goldwater, *supra* note 67, at S 5637.

[120] See appendix A *infra*.

[121] Other itemized lists of U.S. military operations abroad are: J. Clark, *supra* note 108, at 51–130 (78 incidents without declarations of war and not later disavowed or repudiated); J. Rogers, *supra* note 114, at 93–123 (139 such incidents); State, *infra* appendix A at 36 (135 such incidents); and Legislative Reference Service, Library of Congress, *Background Information on the Use of United States Armed Forces in Foreign Countries* (1970 Revision) at 50–57 (152 such incidents).

[122] See appendix A *infra*, note 3 at 110.

[123] Reveley, *Presidential* War-Making: *Constitutional Prerogative or Usurpation?*, 55 Va. L. Rev. 1258 (1969).

[124] Malawer, *The Vietnam War Under the Constitution: Legal Issues Involved in the United States Military Involvement in Vietnam*, 31 U. Pitt. L. Rev. 213 (1969).

[125] See Commager, *supra* note 48, at S 3355.

[126] See appendix F *infra* at 116.

[127] *Id.*

[128] See appendix D *infra* at 114.

[129] See appendix E *infra* at 115.

[130] See appendix G *infra* at 117.

[131] See appendix C *infra* at 112.

[132] *See* Commanger, *supra* note 48, at S3355.

[133] See appendix A *infra* at 92.

[134] *Id.* at 98.

[135] *Id.* at 102.

[136] *Id* at 103. See R Dupuy and W. Baumer, *supra note* 117 at 168.

[137] Appendix A *infra* at 104.

[138] *Id.* generally.

[139] Monaghan, *Presidential War-Making*, 50 Boston U.I. Rev. 27 (1970).

[140] *Id.* at 29.

[141] *Id.* at 31. *See generally* Griswold, *supra* note 55.

[142] United States v Midwest Oil Co., 236 U.S. 459 (1915).

[143] *Id.* at 473.

[144] Presidents had issued orders withdrawing public lands from private acquisition over a period of 80 years. *Id.* at 469. In comparison, Presidents have been sending troops abroad on their own initiative for more than a century and a half. *See* appendix A infra generally.

[145] The statute reads in pertinent part:

"From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or *otherwise*, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be *expressly* authorized by the Constitution or by act of Congress . . ." (Emphasis added.) H. R. 4867, approved June 18, 1878, § 15 (45th Cong.) 20 Stat. 152.

It is true the law was aimed primarily at the use of troops in suppressing domestic violence or insurrection, but on its face it extends to all use of the Army, without any geographical limitation, for the purpose of executing the laws. As we have seen, the President's right to execute the laws includes a power to enforce international obligations as well as domestic laws. See discussion accompanying notes 101 to 104, *supra*.

Furthermore, it was evident to Congress the law it was debating would be applicable to circumstances much broader than the *posse comitatus* situation described in the act. Members of both Houses indicated their awareness of the provision's reach to situations involving the employment of troops against foreign dangers. See remarks of Senator Matthews where he speaks of "foreign wars" 7 Cong. Rec. 4297 (1878) and remarks of Senator Hoar, *id.* at 4303. One proposed amendment, introduced and defeated during floor debate in the House of Representatives, would have exempted from the law the use of forces "on the Mexican border or in the execution of the neutrality laws elsewhere on the national boundary lines." *Id.* at 3849.

In these circumstances and in view of the

broad language of the statute, the author believes it can reasonably be interpreted as purporting to limit the use of the Army in the international theater as well as the domestic one. Thereby the doctrine of constitutional interpretation announced in *Midwest Oil* would squarely provide additional support buttressing the legality of the President's use of troops abroad. Section 15 of H. R. 4867 was repealed in 1956 and restated in broader form as the new section 1385 of title 18, U.S.C. (70 A Stat. 626).

[146] 54 Stat. 885.

[147] *Id.* § 3(e), at 886. Congressional debate on the 1940 Selective Service law shows that when Congress referred to the "Western Hemisphere" it definitely meant only that area of North, Central, and South America which "we have long engaged to protect under the Monroe Doctrine."

The provision is also an unlikely precedent for War Powers legislation because its author, Senator Lodge, conceded on the Senate Floor, "This is a pious hope." It was openly recognized by him and others that Congress could not constitutionally restrict the President's deployment of forces. *See* 86 Cong. Rec. 10092, 10103, 10105, 10116, 10129, 10391, 10742, 10794–10798, and especially 10895–10914, 76th Cong. 2d Sess. (1940).

[148] See appendix A *infra* at 105.

[149] Corwin also argues the U.S. agreement to turn over 50 reconditioned destroyers to Britain in 1940 "was directly violative of at least two statutes. . . ." E. CORWIN, *supra* note 87 at 288–89. And *see* appendix A *infra* at —, and Senate Comm. on Foreign Relations, S. Rep. No. 797, 91st Cong., 1st Sess. (1969) 14–15.

[150] See testimony of McGeorge Bundy, *Congress, the President, and the War Powers, supra* note 55, at 3.

[151] See testimony of Alexander Bickel, *Congress, the President, and the War Powers, supra* note 55, at 45.

[152] See testimony of Attorney William D. Rogers, *Congress, the President, and the War Powers, supra* note 55, at 58.

[153] See testimony of Professor Abram Chayes, who supports legislative efforts to end the Indochina War, but nevertheless vigorously opposes as unconstitutional "bills that seek to lay out a detailed blueprint in advance to govern the relations between the President and the Congress in the exercise of the national war power in all possible contingencies." *Congress, the President, and the War Powers, supra* note 55, at 135.

[154] Rogers, *supra* note 55, at S 7199.

[155] *Id.*

[156] See testimony of Dr. James MacGregor Burns, *Congress, the President, and the War Powers, supra* note 55, at 81–82.

[157] *Id.* Consider the observation of former Ambassador Charles W. Thayer, that:

"It was due largely to the erratic, occasionally irresponsible actions of the ancient Greek assemblies that the city-states' diplomacy was ineffective and defensive collaboration against the Eastern aggressors impossible. Despite growing recognition by Congress and the public of the purpose, methods and needs of an effective diplomacy, so long as the consistent pursuit of long-range interests and aspirations is periodically sacrificed to passing whims inspired by fleeting emotions in Washington, the danger persists of a twentieth century repetition of the Greek debacle. W. THAYER, DIPLOMAT 80 (1959)."

[158] See Ball, *supra* note 55, at S 12621.

[159] *Id.*

[160] Goldwater, *supra* note 67, at S 5637.

[161] *Id.*

[162] *See generally Brief, supra* note 41.

[163] See generally text accompanying note 10 to note 36 *supra*. And *see* S. 731, § 4; S.J. Res. 59, § 4; and S.J. Res. 95, § 4, all *supra* note 2.

[164] See appendix A *infra* at 107.

[165] *See* R. KENNEDY, THIRTEEN DAYS (1969) at 35, 36, 68, 97, and 107.

[166] Goldwater, *supra* note 67, at S 5638.

[167] KENNEDY, *supra* note 165, at 53.

[168] *Id.* at 53–54.

[169] Goldwater, *supra* note 67, at S 5638.

[170] *See generally* testimony of Commager and Morris, *supra* note 48; testimony of Professor Alexander Bickel, inserted in the Cong. Rec. by Senator Javits, 117 Cong. Rec. (daily ed.) S 12387 (July 28, 1971). *See generally, Brief, supra* note 41.

[171] See *Brief, supra* note 41, at S 2528. In case the President should veto any such legislation shoving him into an expanded war, he would be put in the unenviable position of facing a Congress which (1) would likely claim he had thereby deprived himself of any authority to act at all in the hostility concerned and (2) could vote to override his veto.

[172] Brant, *Nixon vs. Constitution in War Powers Debate*, The Washington Post, July 4, 1971, at B–3.

Compare the position of Ambassador Thayer, who views the Foreign Service dangerously handicapped under present Congressional practices, let alone under the complications added by War Powers legislation. For example Thayer recites:

"In his Memoirs, President Truman indicates how the Greek Civil War was very nearly lost to the Communists because of the time needed to get the necessary Congressional action.

"The first warning that the British, then on the verge of bankruptcy, would have to withdraw from Greece not later than April 1, 1946, was telephoned to the President by the State Department on Friday, February 21. Four days later Congressional leaders were notified that some sort of action would be essential. But it was not until seventy-five days later, that the House on May 9, finally approved the measure. Meantime the Communist guerrillas had almost succeeded in overthrowing the Greek government. C. W. THAYER, *supra* note 157, at 78–79."

[173] S. 731, *supra* note 2, at § 1A(4).

[174] Secretary of State Rogers contends "such a restriction could seriously limit the ability of the President to make a demonstration of force . . . to deploy elements of the Sixth Fleet in the Mediterranean in connection with the Middle East situation," which is exactly what President Johnson did in 1967. See Rogers, *supra* note 55, at S 7199, and see discussion, accompanying notes 177 to 179, *infra*. Moore, *supra* note 46, at S6470; S. Comm. on Foreign Relations, note 149, at 26.

Representative Zablocki, Chairman of the House Subcommittee hearings on war powers in 1970, told Senator Javits during the latter's appearance at the hearings: "Let us say that as a result of renewed hostilities in the Middle East the President finds it necessary to intervene on the side of Israel. Your bill does not seem to fit that contingency since the United States has no formal treaty or pact with Israel."

Senator Javits replied: "I would hope that long before any such terribly untoward situation would develop in the Middle East . . . this would have been adopted as a NATO responsibility and then it would come under the fourth item of my own bill." *See Congress, the President, and the War Powers, supra* note 55, at 400–401.

Thus, from Senator Javits' own admission the President could not act independently in defense of the people of Israel under his bill, but would have to await either a decision by NATO to take collective action in support of Israel (no one else has suggested Israel is a NATO obligation) or legislative action by Congress.

No authority considers the Middle East Resolution to be pertinent, apparently because it (1) does not grant any authority to employ force, but simply states a policy that "the United States is prepared to use armed forces," (2) does not apply unless the aggressor country is "controlled by international communism," and (3) provides the employment of force "shall be consonant with the treaty obligations of the United States" and we do not have any defense treaty with Israel. Pub. Law 85–7, a joint resolution to promote peace and stability in the Middle East, approved March 9, 1957 (71 Stat. 5).

[175] Goldwater, *supra* note 67, at S 5637.

[176] Remarks of Senator Goldwater, 117 Cong. Rec. (daily ed.) S 5636-S 5637 (April 26, 1971).

[177] See appendix A *infra* at 109.

[178] The Evening Star (Washington, D.C.), May 12, 1971, D–4; Johnson, *The Vantage Point*, excerpt 8, The Washington Post, Oct. 24, 1971, A1, A14.

[179] *Id.*

[180] See Rogers, *supra* note 55, at S 7199.

[181] U. S. Dept. of Navy, *Summary of Wars/Near Wars Since 1946*, 116 Cong. Rec. S15712–S15713 (May 15, 1970).

[182] See S. 731, *supra* note 173; S.J. Res. 59, *supra* note 2, § 2; S.J. Res. 95, *supra* note 2, § 3, and S. 1880, *supra* note 2, § 3, which prohibit the President from inferring a right to act under any law unless that law "specifically authorizes the use of such forces in armed conflict." *see also* S.J. Res. 18, which prohibits deployments to fullfill a treaty obligation qualified by constitutional limitations or conditions. Since nearly all United States defense treaties "limit" or "condition" our responsibility to act to steps which are "in accordance with" our own "constitutional processes," S.J. Res. 18 would seem designed to preclude Presidential initiatives under all such agreements. *See* S. Rep. No. 794, 90th Cong., 1st Sess. 15. (1967).

[183] See appendix A *infra* at 108.

[184] Unpublished letter of Dean Rusk in personal files of Senator Goldwater.

[185] See testimony of Professor Moore where he warns S. 731 would prohibit "humanitarian intervention similar to the joint United States-Belgian operation in the Congo if the intervention were not for the protection of United States nationals." Moore, *supra* note 46, at S6470.

[186] Commager, *supra* note 48, at S 3357.

[187] See text accompanying notes 185–86 *Supra*.

[188] See appendix A *infra* at 91, 92.

[189] See KENNEDY, *supra* note 165, at 35–36.

[190] See text accompany note 104 to note 108 *supra*.

[191] See text accompany note 109 *supra*.

[192] Even Professor Bickel, who otherwise endorsed War Powers legislation, cautioned: "I don't think the President can be deprived of his power to respond to an imminent threat of attack (as well as to the attack itself); or of his power to respond to attacks and threats against our troops wherever they may be, as well as against our territory; or of the power to continue to see to the safety of our troops once they are engaged, even if a statutory 30-day period has expired." Bickel, *supra note* 170, at S12390.

Almost all commentators grant that the Foulding Fathers purposefully left with the President at least "the power to repel sudden attacks." *See, e.g.*, Note, *The War-Making Powers: The Intentions of the Framers in the Light of Parliamentary History*, 50 BOSTON U. L. REV. 1 (1970).

[193] Senator Goldwater has put the same view in these words: "I am convinced there is no question that the President can take military action at any time he feels danger for the country or for its freedoms or, stretching a point, for its position in the world." Goldwater, *supra* note 67, at S5639. *See generally* text accompanying note 86 to note 155 *supra*.

And see position of Bernard Schwartz that: "The unwritten constitutional law of presidential power (if not the text of the basic document) has all but vested in the highest officer the virtual authority to make war whenever deemed necessary to protect the interests of the United States." B. Schwartz, *supra* note 72 at 177.

[194] *See, e.g.*, text accompanying note 41 to note 50 *supra;* Javits, *supra* note 36; Morris,

supra note 48; Commager, *supra* note 48; and Bickel, *supra* note 170.

[195] *See generally*, Bickel, *supra* note 170 at S12388; Commager, *supra* note 48, at S3353: testimony of McGeorge Bundy, inserted in the Cong. Rec. by Senator Javits, 117 Cong. Rec. (daily ed.) S5629 (April 26, 1971).

[196] Javits, *supra* note 36, at S1204.

[197] *See* remarks of Senator Cooper, 117 Cong. Rec. S23722–S23744 (July 10, 1970), with accompanying documents.

[198] *See* remarks of Senator Goldwater, 117 Cong. Rec. (daily ed.) S12446 (July 29, 1971).

[199] Berk v. Laird, 443 F.2d 1039 (1971), *cert. denied* 40 U.S.L.W. 3166 (1971).

[200] During Floor debate on the military draft extension law, Senator Stennis, Chairman of the Senate Committee on Armed Services, asserted this is the first time Congress has set numerical strength levels on the regular forces, as distinguished from the Reserves, and including volunteers, officers, and inductees. *See* remarks of Senator Stennis, 117 Cong. Rec. (daily ed.) at S9589 (June 21, 1971).

See also Senate Report 92–93 on H.R. 6531, 92d Cong., 1st Sess. at 35 (1971); Pub. L. 92–129, Act of Sept. 28. 1971, § 301.

See generally the report by the Congressional Reference Service, Library of Congress, *Regulating the Size of the Armed Force Under Selective Service Law*, 117 Cong. Rec. (daily ed.) S9590–S9591 (June 21, 1971).

[201] For example, following a trip to Saigon in May, 1964, Secretary of Defense McNamara brought back recommendations for increases in American assistance, specifically including an increase in the size of the American advisory personnel and a larger air force for South Vietnam. President Johnson asked for, and obtained, from Congress an additional $125 million in military aid funds earmarked for these purposes. Pub. L. 88–633, 78 Stat. 1009, 1010; Pub. L. 88–634, 78 Stat. 1015 (1964).

In 1965, less than nine months after Congress passed the Gulf of Tonkin Resolution, President Johnson sent to Congress an appropriation request specifically and solely related to the war in Vietnam. In it he asked for $700 million to support an increase in the number of troops in South Vietnam. The House of Representatives approved the money by a vote of 408 to 7 and the Senate approved it by a vote of 88 to 3. 111 Cong. Rec. 9232–9284; Pub. L. 89–18, 79 Stat. 109 (1965).

In each of these instances Congress was confronted with a policy decision to expand the defense commitment in Vietnam in the future. These were not requests for funds to cover past expenses, but to support future policy. Here is the kind of clear-cut decision on a specific issue in which the author believes Congress can play a proper and important role in shaping the advance course of the nation's activities or in shifting present trends, if it wishes.

[202] William H. Rehnquist contends that "at the very heart of the Presidential power as Commander-in-Chief is his sole authority to determine the tactics and strategy which shall govern the way in which hostilities once commeced are conducted." SENATE COMM. ON FOREIGN RELATIONS, DOCUMENTS RELATING TO THE WAR POWER OF CONGRESS, THE PRESIDENT'S AUTHORITY AS COMMANDER-IN-CHIEF AND THE WAR IN INDOCHINA, 91st Cong., 2nd Sess. 177 (July 1970).

Thus a distinction should be made between the decision of Congress to cut or reject an appropriation of funds for the conduct of hostilities and the attempt by Congress to dictate rules governing the deployment of forces. For example, the Senate Committee on Foreign Relations was acting within the authority of Congress in October when it voted to reduce the funds sought by the Nixon Administration for military and economic assistance in Cambodia from $341 million to $250 million. SENATE COMM. ON FOREIGN RELATIONS, Rep. No. 92–404 at 46–47, 92d Cong., 1st Sess. (1971).

On the other hand, the author believes Congress would have improperly invaded the President's sphere as the primary source of foreign policy and Commander in Chief had it passed the so-called "End the War Amendment," which called for a total withdrawal of U.S. troops from Vietnam by December 31, 1971. This would be an effort by Congress to "direct the conduct of campaigns," something the Supreme Court said, in *Ex parte Milligan*, that it cannot do. For text of amendment, see 117 Cong. Rec. (daily ed.) at S8760 (June 10, 1971). *Cf.* Mansfield Amendment no. 427, which simply declares a policy of withdrawal from Vietnam and "requests" the President to implement it. *See* text at 117 Cong. Rec. (daily ed.) S15111 (Sept. 27, 1971).

In some current instances, Congress has passed quasi-restrictions on the deployment of forces with the acquiescence of the President. Section 843 of The Department of Defense Appropriations Act, 1971, is a case in point. P.L. 91–668. This provision prohibits "the introduction of American ground combat troops into Laos or Thailand," but it was not opposed by the Administration. Nor had the Administration earlier opposed a restriction against the introduction of U.S. ground combat troops or advisors into Cambodia when this provision was placed in the Supplement Foreign Assistance Authorization Act for 1971. See Pub. L. 91–652; and Congressional Research Service, Library of Congress, *Legislation Enacted by the 91st Congress to Limit United States Military Involvement in Southeast Asia*, March 30, 1971.

So long as the President agrees to comply with the limitation (each of these two restate a previously announced intention of President Nixon), the language will have the full force and effect of law. However, it is the author's view that the President could legally defy these and similar restrictions on the use of American forces whenever he determines it is vitally necessary to defend American security.

Mr. GOLDWATER. Mr. President, I ask further unanimous consent that there be printed a chronological list of 199 U.S. military hostilities abroad without a declaration of war, from 1798 to 1972.

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

WAR WITHOUT DECLARATION

APPENDIX*

A chronological list of 199 U.S. military hostilities[1] abroad without a declaration of war, 1798–1972

1798–1800: Naval-War With France

When John Adams became President in 1797, he faced the serious problem of strained relations between France and the United States, in which France had made it a practice to seize American merchant ships and to manhandle their crews. Adams first attempted to negotiate a settlement, but, when the French demanded exorbitant bribes and loans, his envoys rejected the proposals and departed.

Adams, thereupon, asked Congress for the power to arm merchant ships and take other defensive measures. Congress responded by creating a Navy Department, voting appropriations for new warships, and authorizing the enlistment of a "Provisional Army" for the duration of the emergency. In July 1798, the French treaties and consular conventions were abrogated.

The result was a "quasi-war," during which neither country declared war. The American Navy attacked only French warships and privateers and fought primarily for the protection of commerce. Some ninety French ships were captured during this naval war. On September 30, 1800 a convention was agreed to and peace was achieved. State, 2.

1800: West Indies

On April 1, U.S. Marines participated in the action between the U.S. schooner *Enterprise* and a Spanish man-or-war brig in the West Indies. USMC, I, 40.

1801–1805: War With Tripoli

During the early years of the Republic, the United States, following the practice of several European nations, paid tribute to North African pirates. Shortly after Jefferson became President, the Pasha of Tripoli, dissatisfied with the apportionment of tribute, declared war on the United States (May 1801). Jefferson thereupon sent warships to the Mediterranean. After naval actions and landings under Commodore Preble, an inconclusive treaty of peace with Tripoli was signed in 1805. Congress passed various enabling acts during the conflict but never declared war. State, 3.

1806: Mexico (Spanish territory)

Captain Z. M. Pike, with a platoon of troops and on the orders of General James Wilkinson, invaded Spanish territory at the headwaters of the Rio Grande, apparently on a secret mission. State, 16.

1806–1810: Gulf of Mexico

Americans gunboats operated from New Orleans against Spanish and French privateers. State, 16.

1810: West Florida (Spanish territory)

Governor Claiborne of Louisiana, on orders from the President, occupied with troops disputed territory east of the Mississippi as far as the Pearl River. No armed clash occurred. State, 16.

1813. West Florida (Spanish territory)

On authority granted by Congress, General Wilkinson seized Mobile Bay with 600 soldiers, a small Spanish garrison gave way without fighting. State, 16.

1813–1814: Marquesas Islands, South Pacific (claimed by Spain)

U.S. Marines built a fort on one of the islands to protect three captured prize ships. State, 16.

1814–1825: Caribbean Area

There were repeated engagements between American ships and pirates both ashore and off shore about Cuba, Puerto Rico, Santo Domingo, and Yucatan. In 1882, Commodore James Biddle employed a squadron of two frigates, four sloops of war, two brigs, four schooners, and two gunboats in the West Indies. The United States sunk or captured 65 vessels. Marine detachments participated in at least 14 of these actions. State, 16.

1815: Second Barbary War (Algiers)

In 1812 an Algerian naval squadron operated against American shipping in the Mediterranean. In one attack an American merchantman was captured and its crew imprisoned. In March, 1815, Congress passed an act that authorized the use of armed vessels "as may be judged requisite by the President" to provide effective protection to American commerce in the Atlantic and the

*This edition includes supplementary information added by the author since the article was originally published.

[1] The list includes only actual battles, landings, or evacuations in foreign territory or waters. Deployments to maintain an American presence, or alerts bringing an advanced state of readiness are not included, except for seven or eight incidents when the risk of war was unusually grave. No military operations known to have been subsequently disavowed or repudiated have been included. The list was prepared with the direction of U.S. Senator Barry Goldwater and is published with his consent.

Mediterranean. A naval squadron of 10 vessels under Commodore Stephen Decatur attacked Algiers, compelling the Dey to negotiate a treaty. Decatur also demonstrated at Tunis and Tripoli. All three states were forced to pay for losses to American shipping, and the threats and tribute terminated. State, 3.

1816–1818: Spanish Florida

During the "First Seminole War," U.S. forces invaded Spanish Florida on two occasions. In the first action, they destroyed a Spanish fort harboring raiders who had made forays into United States territory. In the second, Generals Jackson and Gaines attacked hostile Seminole Indians. In the process, United States forces attacked and occupied Spanish posts believed to serve as havens by the hostiles. President Monroe assumed responsibility for these acts. Moore, 403–406.

1817: Amelia Island (Spanish Territory)

Under orders from President Monroe, U.S. forces landed and expelled a group of smugglers and pirates. Moore, 406–408.

1818: Oregon

The U.S.S. *Ontario* landed at the Columbia River and in August took possession. Russia and Spain asserted claims to the area. Rogers, 96.

1820: West Africa

Marines participated in the capture of seven slave schooners by the U.S. corvette *Cyane* off Cape Mount and the Gallinos River on the west coast of Africa during the period from April 5 through 12. USMC, I, 64.

1820–1822: West Coast of South America

Marines were aboard three of the U.S. ships stationed off the west coast of South America from 1820 until May 1822, to protect American commerce during the revolt against Spain, USMC, I, 65.

1822: Cuba (Spanish Territory)

U.S. naval forces landed on the northwestern coast of Cuba and burned a pirate station. State, 17.

1823: Cuba (Spanish Territory)

Between April and October naval forces made a number of landings in pursuit of pirates, apparently incident to Congressional authorization which became operative in 1822. State, 17.

1824: Cuba (Spanish Territory)

In October, the U.S.S. *Porpoise* landed sailors to pursue pirates during a cruise authorized by Congress. State, 17.

1825: Cuba (Spanish Territory)

In March, British and American forces landed on two offshore Cuban islands to capture pirates who were based there. The action appears to be incident to Congressional authority. State, 17.

1827: Greece

Apparently acting pursuant to legislation, in October and November, United States forces from the U.S.S. *Warren* and the U.S. schooner *Porpoise* engaged in seven actions against pirate vessels off Greece and made landings on three Greek Islands. State, 17.

1828: West Indies

In December, incident to legislation, Marines participated in the capture of the Argentinean privateer *Federal* by the U.S. sloop *Eric* at St. Bartholomew Island, W. I. USMC, I, 67.

1830: Haiti

On June 5, marines participated in the capture of the slave brig *Fenix* by the U.S. schooner *Grampus* off Cape Haitien, Haiti. USMC, I, 67.

1831–1832: Falkland Islands (Argentine)

American forces under Captain Duncan of the U.S. *Lexington* landed to investigate the capture of three American sailing vessels. The Americans succeeded in releasing the vessels and their crews and dispersed the Argentine colonists. State, 17.

1832: Sumatra

A force of 250 men from the *U.S.S. Potomac* landed to storm a fort and punish natives of a town for an attack on American shipping and the murder of crew members. State, 18.

1833: Argentina

Between October 31 and November 15, at the request of American residents of Buenos Aires, a force of 43 marines and sailors landed from the U.S.S. *Lexington* to protect American lives and property during an insurrection. State, 18.

1835: Samoan Islands

On October 11, eighty Marines and sailors burned the principal village on the island to avenge harsh treatment meted out to American seamen. Paullin, 729.

1835–1836: Peru

Marines from the U.S.S. *Brandywine* landed at various times at Callao and Lima to protect American lives and property during a revolt, and to protect the American Consulate at Lima. State, 18.

1837: Mexico

On April 16, marines joined in the capture of a Mexican brig-of-war by the U.S.S. *Natchez* off Brasos de Santiago for illegal seizure of two American merchantmen. USMC, I, 70.

1839: Sumatra

In January, American forces from the U.S. sloop *John Adams* and the U.S. frigate *Columbia* landed at Muckie, Sumatra, to protect American lives and property and to punish natives of two towns for attacking American ships. USMC, I, 70.

1840: Fiji Islands

American forces totaling 70 officers and men, landed on July 12 and 26 to punish natives of two towns for attacking American exploring and surveying parties. State, 18.

1841: Samoan Islands

On February 25, an American force of 70 marines and seamen from the U.S.S. *Peacock* landed to avenge the murder of a seaman. They burned three native villages. USMS, I, 71.

1841: Drummond Island (Kingsmill Group, Pacific Ocean)

On April 6, marines from the U.S.S. *Peacock* landed and burned two towns to avenge the murder of a seaman by natives. State, 18.

1843: China

In June and July, a clash between Americans and Chinese at the Canton trading post led to the landing of 60 sailors and marines from the *St. Louis*. Paullin, 1095–1096.

1843: West Africa

In November and December, four U. S. vessels from Commodore Perry's squadron demonstrated and landed various parties (one of 200 marines and sailors) to discourage piracy and the slave trade along the Ivory Coast and to punish attacks made by the natives on American seamen and shipping. In the process, they burned villages and killed a local ruler. The actions appear to have been pursuant to the Treaty of August 9, 1842, with Great Britain relative to the suppression of the slave trade. State, 18.

1844: Mexico

President Tyler deployed our forces to protect Texas against Mexico, anticipating Senate approval of a treaty of annexation, which was rejected later in his term. Corwin, 245.

1844: China

On June 18, Marines from the U.S. sloop *St. Louis* went ashore at Canton, China, to protect American lives, USMC, I, 72.

1845: African coast

On November 30, Marines joined in the capture of the slave bark *Pons* by the U.S. sloop *Yorktown* off Kahenda, Africa. The action was consistent with the Treaty of 1842. USMC, I, 72.

1846: Mexico

President Polk ordered General Scott to occupy disputed territory months preceding a declaration of war. Our troops engaged in battle when Mexican forces entered the area between the Nueces and Rio Grande Rivers. The fighting occurred three days before Congress acted. U.S. 378.

1849: Smyrna (Now Izmir, Turkey)

In July, the *U.S.S. St. Louis* gained the release of an American seized by Austrian officials. State, 18.

1850: African coast

On June 6, Marines joined in capturing a slave ship by the U.S. brig *Perry* off Luanda, Africa. The action was consistent with the Treaty of 1842. USMC, I, 77.

1851: Turkey

After a massacre of foreigners (including Americans) at Jaffa, the U.S. Mediterranean Squadron was ordered to demonstrate along the Turkish coast. Apparently, no shots were fired, but the display amounted to compulsion. State, 19.

1851: Johanna Island (East of Africa)

The U.S.S. *Dale* delivered an ultimatum, bombarded the island, and landed a force to punish the local chieftain for the unlawful imprisonment of the captain of an American whaler. State, 19.

1852–1853: Argentina

Several landings of marines took place in order to protect American residents of Buenos Aires during a revolt. State, 19.

1853: Nicaragua

American forces under Captain Hollins of the U.S.S. *Cyane* landed at Greytown about March 10 to protect American lives and interests during political disturbances. His activities were approved by the Secretary of the Navy. Moore, 414–415.

1853: China

On September 11, a small Marine force from the U.S. steamer *Mississippi* boarded a Siamese vessel in the Canton River and put down a mutiny. USMC, I, 78.

1853: West Coast of Africa

In accordance with the Treaty of 1842, on December 3, Marines joined in the capture of the slave schooner *Gambrill* by the U.S. frigate *Constitution* off the Congo River on the west coast of Africa. USMC, I, 78.

1853: Smyrna

Martin Koszta, who was an American declarant, was released by his Austrian captors, upon an ultimatum given by Naval Captain Ingraham who trained his guns upon the Austrian vessel on which Koszta was held. Secretary of State Marcy defended the rescue against protest by the Austrian Government. Berdahl, 50.

1853–1854: Japan

Commodore Matthew C. Perry led an expedition consisting of four men-of-war to Japan to negotiate a commercial treaty. Four hundred armed men accompanied Perry on his initial landing at Edo Bay in July, 1853, where he stayed for ten days after refusing to leave when ordered. He then sailed south, landing a force at the Bonin Islands, where he took possession, and at the Ryukyus, where he established a coaling station. In March, 1854, he returned to Edo Bay with ten ships and 2,000 men, landed with an escort of 500 men, and after six weeks signed a treaty with Japanese authorities at Kanagawa. The whole campaign was on executive authority. State, 19.

1854: West Coast of Africa

Pursuant to the Treaty of 1842, on March 10, Marines joined in the capture of a slave brig by the U.S. brig *Perry* off the west coast of Africa. USMC, I, 78.

1854: China

American and British forces consisting of 150 English sailors, 60 U.S. sailors, and 30 merchant sailors landed at Shanghai on April 4 and stayed until June 7 to protect their nationals during a battle between Chinese imperial and revolutionary troops. State, 19.

1854: Greytown, Nicaragua

In July, the commander of an American naval vessel demanded reparation after the U.S. minister to Central America was injured during a riot. When this was not forthcoming, the vessel bombarded the town. President Pierce defended the action of the American commander in his annual message to Congress. Moore, 415–416.

1854: Okinawa

On July 6, a force of 20 Marines from the U.S. steamer *Powhatan* went ashore on Okinawa and seized a religious shrine in punishment of persons who murdered an American. On November 17, Marines and seamen from the U.S. sloop *Vincennes* went ashore again at Okinawa to enforce treaty provisions. USMC, I, 78.

1855: China

There were two brief actions by U.S. warships, the first a landing in May at Shanghai to protect American interests there, the second an attack in August at Hong Kong against pirates. State, 20.

1855: Fiji Islands

In September and October, marines from the sloop-of-war *John Adams* landed four times to seek reparations for depredations against Americans and to force natives to honor a treaty. The landing parties fought skirmishes and burned some villages. USMC, I, 79.

1855: Uruguay

In August and November, U.S. naval forces put sailors ashore to protect American interests in Montevideo. State, 20.

1856: Panama, Republic of New Granada

U.S. forces landed and stayed two days to protect American interests, including the Isthmian railroad, during an insurrection. (By the treaty of 1846 with New Granada, the United States had acquired the right to protect the Isthmus and to keep it open, in return for guaranteeing its neutrality.) State, 20.

1856: China

In October and November, the U.S. warships *Portsmouth* and *Levant* landed 280 officers and men to protect American interests at Canton during hostilities between the British and the Chinese and in response to an unprovoked assault upon an unarmed boat displaying the U.S. flag. The Americans took and destroyed four Chinese forts. The attack by U.S. war vessels without authority of Congress was approved by President Buchanan. Berdahl, 51.

1858: Uruguay

Forces from two U.S. warships landed in January to protect American lives and property during a revolt in Montevideo. The action was taken in conjunction with the forces of other powers at the request of the local government. State, 20.

1858: African coast

On September 8, Marines joined in the capture of a ketch laden with slave food by the U.S. sloop *Marion* off the southeast coast of Africa. The action was consistent with the Treaty of 1842. USMC, I, 80.

1858: Cuban waters

After repeated acts of British cruisers in boarding and searching our merchant vessels in the Gulf of Mexico and adjacent seas, President Buchanan addressed remonstrances to the British Government, against these searches and, without authority from Congress, ordered a naval force to the Cuban waters with directions "to protect all vessels of the United States on the high seas from search or detention by the vessels of war of any other nation." A conflict with Great Britain was avoided only by its abandonment of her claim to the right of visit and search in time of peace. Berdahl, 51; Richardson, 3038.

1858: Fiji Islands

On October 6, about 60 Marines and sailors from the *U.S.S. Vandalia* landed to punish natives for the murder of two American citizens and engaged in a fierce conflict with 300 native warriors. State, 21.

1858–1859: Turkey

American citizens were massacred in 1858 at Jaffa and mistreated elsewhere. In the face of Turkish indifference, the Secretary of State asked the U.S. Navy to make a display of force along the Levant. State, 21.

1858–1859: Paraguay

From October 1858, to February, 1859, an American expedition went to Paraguay to demand redress for an attack on a naval vessel in the Parana River during 1855. Apologies were forthcoming after a display of force, which amounted to compulsion. Congress authorized the action. State, 21.

1859: African coast

On April 21 and 27, Marines joined in the capture of a slave ship near the Congo River, Africa. The action was consistent with the Treaty of 1842. USMC, I, 81.

1859: Mexico

Two hundred U. S. soldiers crossed the Rio Grande in pursuit of the Mexican bandit Cortina. State, 21.

1859: China

On July 31, forces from the U.S.S. *Mississippi* landed at Woosung and Shanghai, where they remained until August 2, to protect American interests and restore order. The American consul had called on the ship for assistance. State, 21.

1860: Kissembo, West Africa

On March 1, 40 Marines and seamen from the sloop-of-war *Marion* landed twice to prevent the destruction of American property during a period of local unrest. State, 21.

1860: Colombia (State of Panama)

On September 27, the Marine guard from the sloop U.S.S. *St. Mary's* landed to protect American interests during a revolt. This may have been authorized pursuant to the Treaty of 1846. State, 21.

1863: Japan

On July 16, when Japanese shore batteries at Shimonoseki fired on a U. S. merchant ship, the U.S.S. *Wyoming* retaliated by firing on three Japanese vessels lying at anchor. The shots were returned, and, by the time the action was over, there were casualties on both sides. The American Minister had demanded redress.

1864: Japan

From July 14 to August 3, U. S. forces protected the U. S. Minister to Japan when he visited Yedo concerning some American claims against Japan. The forces also were designed to impress the Japanese with American power. LRS, IV, 52.

1864: Japan

Between September 4 and 8, naval forces of the United States, Great Britain, France, and the Netherlands jointly forced open the Straits of Shimonoseki, which had been closed in violation of commercial agreements. Shore batteries were destroyed and 70 cannon seized. State, 21.

1865–1866: Mexican border

In late 1865, General Sheridan was dispatched to the Mexican border with 50,000 troops to back up the protest made by Secretary of State Seward to Napoleon III that the presence of over 25,000 French troops in Mexico "is a serious concern to the United States." In February, 1866, Seward demanded a definite date be set for withdrawal and France complied. Though American forces did not cross the border, the threat of foreign military operations was clear and imminent. U.S., 580–581.

1865: Panama

American forces from the U.S.S. *St. Mary's* landed to protect American interests during a revolt. This was apparently implied by the Treaty of 1846. State, 22.

1866: China

Various landings by over 100 marines and seamen were made in June and July at Newchwang to punish an assault on the American Consul and to guard diplomats. State, 22.

1867: Formosa

On June 13, 181 Marines and seamen from the U.S.S. *Hartford* and U.S.S. *Wyoming* landed to punish natives who had murdered the crew of a wrecked American merchantman. Several huts were burned. USMC, I, 91.

1867: Nicaragua

On September 6, Marines landed and occupied Managua and Leon. USMC, I, 92.

1868: Japan

From February 1 until April 4, landings were made at Hiago, Nagasaki, and Yokohama to protect American lives and property during local hostilities. USMC, I, 92.

1868: Uruguay

At the request of local Uruguayan authorities, several landings were made from five U.S. steamers at Montevideo during the month of February in order to protect American lives and property during an insurrection. State, 22.

1868: Colombia

An American force landed at Aspinwall in April to protect the transit route during the absence of local police. This was impliedly permitted by the Treaty of 1846. State, 22.

1869–1871: Dominican Republic

President Grant, having negotiated a treaty of annexation, sent a strong naval force to the island to protect it from invasion and internal disorder, both during consideration of the treaty by the Senate and for months after its rejection. Berdahl, 48.

1870: Mexico

On June 17, the *U.S.S. Mohican* pursued a pirate ship up the Tecapan River near Mazatlan, landed a party of Marines and seamen, and destroyed it during a pitched battle. State, 22.

1871: Korea

In June, American landing forces under Admiral Rodgers captured five Korean forts after a surveying party, granted permission to make certain surveys and soundings, had been attacked. No treaty or convention was in effect. State, 22.

1873: Colombia

In May and September, nearly 200 American forces landed at the Bay of Panama to protect American lives and interests during local hostilities. The actions were impliedly allowed by the Treaty of 1846. State, 22.

1873: Cuban waters

On October 31, the steamer *Virginius*, flying the American flag, was captured some 18 miles from Jamaica by the Spanish steamer *Tornado*, her actual destination having been to make a landing of men and arms in Cuba. In violation of treaty stipulations with the U.S. regarding counsel and trial before a proper court, a summary court-martial was convened and with circumstnces of the utmost barbarity, a total of 53 of the crew and passengers were executed, including a considerable number of Americans. Large meetings were held in this country demanding violent action against Spain and President Grant authorized the Secretary of the Navy to put our

navy on a war footing. Every available ship was commissioned or recalled from foreign stations and war looked imminent. Spain yielded and the *Virginius* with her surviving crew and passengers were returned in late December. Also, by an agreement concluded February 27, 1875, Spain admitted the illegality of the capture and the wrongfulness of the summary execution and paid an indemnity of $80,000 to the United States. Chadwick, 314–351.

1873–1882: Mexico

U.S. troops repeatedly crossed the Mexican border to pursue cattle thieves and Indian marauders. Mexico occasionally reciprocated. Such incursions were finally recognized as legitimate by agreements concluded in 1882 and subsequent years. Moore, 418–425.

1874: Hawaii

In February, a party of 150 men from two U.S. vessels landed to preserve order at the request of local authorities. State, 23.

1876: Mexico

On May 16, at the request of the U.S. consul at Matamoras, a small American force was landed to preserve order when the town was temporarily without a government. State, 23.

1882: Egypt

On July 14, over 100 forces from the U.S.S. *Lancaster*, U.S.S. *Quinnebaug*, and U.S.S. *Nipsic* landed at Alexandria, when the city was being bombarded by the British navy, in order to protect American interests there, including the American consulate, State, 23.

1885: Colombia (State of Panama)

On January 18, March 16, March 31, April 8, April 11, April 12, and April 25, American forces landed to protect American property and guard valuables in transit over the Isthmus during local revolutionary activity, an action authorized under the Treaty of 1846. USMC, I, 96.

1888: Korea

On June 19, 25 men from the U.S.S. *Essex* landed at Chemulpo and marched to Seoul to protect American residents during unsettled political conditions. The action was requested by the American Minister. State, 23.

1888–1889: Samoan Islands

In 1886, the German consul announced that the Sanwan group was henceforth a German protectorate, an action that brought the United States and Great Britain together in opposition. By 1889, Germany and the United States were close to a direct confrontation. The United States and Germany, together with Great Britain, shared certain treaty rights in Samoa for the maintenance of naval depots. In November 1888, U.S. Marines landed from the *U.S.S. Nipsic* to protect American interests after civil strife broke out ashore. In January, 1889, German forces landed, and, when those forces were attacked by the natives, German ships shelled the island. This action by Germany aroused the American public, and Congress appropriated $500,000 for the protection of American lives and property on the island and $100,000 for the development of Pago Pago harbor. The United States also ordered two more warships to the scene. All three powers had warships on the scene and an untoward event might have touched off war had not a hurricane in March, 1889, destroyed all the warships except one British vessel. Thereafter, the Germans invited the three powers to a conference, which was agreed to and held in Berlin. In April, 1889, they established a three-power protectorate there. In 1890 the Samoans were divided, the United States acquiring Tutuila. State, 23.

1888: Haiti

In December, American warships made a display of force to obtain the release of an American merchant vessel captured by a Haitian warship. The Haitian Government surrendered the ship and paid an indemnity after Admiral Luce gave an ultimatum ordering its release before sunset. State, 24.

1889: Hawaii

On July 30, at the request of the American Minister in Honolulu, the U.S.S. *Adams* sent a marine guard ashore to protect American lives and property during revolutionary disroder. State, 24.

1890: Argentina

The *U.S.S. Tallapoosa* landed a party in July to protect the American Consulate and Legation in Buenos Aires during a revolt. State, 24.

1891: Navassa Island, Haiti

American forces from the *U.S.S. Kearsarge* landed on June 2 to protect American lives and property during a period of unrest. The action was taken pursuant to Congressional action. State, 24.

1891: Bering Sea

An American squadron operated from June to October, jointly with British naval vessels, seizing four schooners. Rogers, 109.

1891: Chile

In August, 102 Americans of the South Pacific station landed at Valparaiso during a revolt in order to protect the American Consulate and American lives. State, 24.

1894: Brazil

The U.S. Navy engaged in gunfire and a show of force in January to protect American shipping at Rio de Janeiro during a revolt of the Brazilian navy. President Cleveland stated our action "was clearly justified by public law." State, 24.

1894: Nicaragua

In July, American forces landed at Bluefields to protect American interests during a revolt. State, 24.

1894–1896: Korea

On July 24, at the request of the American Minister, a force of 21 Marines and 29 sailors landed at Chemulpo and marched to Seoul to protect American lives and property during the Sino-Japanese War. A Marine guard remained at the American Legation until 1896. State, 24.

1894–1895: China

On December 6, 1894, Marines disembarked from the *U.S.S. Baltimore* at Taku and marched to Tientsin to protect American lives and property during the Sino-Japanese War. The landing party maintained order until May 16, 1895. USMC, I, 98.

1895: Colombia (State of Panama)

Marines from the *U.S.S. Atlanta* landed in March to protect American interests during a revolt. This appears to have been authorized by treaty. State, 24.

1895–1896: Korea

During internal disorders from October 11, 1895, to April 3, 1896, the American Legation at Seoul was protected by Marines from various ships. Ellsworth, 60.

1896: Nicaragua

On May 2, marines were put ashore at Corinto by the *U.S.S. Alert* during revolutionary disorders to protect American interests. USMS, I, 99.

1898: Nicaragua

On February 7, Marines landed at San Juan del Sur by the *U.S.S. Alert* to protect Americans against disorder. USMC, I, 99.

1898–1899: China

American forces guarded the Legation at Peking and the Consulate at Tientsin from November, 1898, to March, 1899, during a period of unrest. President McKinley reported this protective action in his annual message. State, 25.

1899: Nicaragua

On February 24, in response to a petition from foreign merchants during an insurrection, Marines landed to protect life and property at San Juan del Norte and Bluefields. State, 25.

1899: Samoan Islands

Sixty Americans landed on February 14 from the *U.S.S. Philadelphia*, and on April 1 joined a British force in efforts to disperse native rebels. This may have been under color of treaty or statute. State, 25.

1899–1901: Philippine Islands

The United States employed 126,468 troops against the Philippine Insurrection without a declaration of war after the Treaty of Peace with Spain was concluded. Presumably the United States acted to suppress the rebellion under authority of the Treaty of Peace, which transferred to it the sovereignty possessed by Spain in the Philippine Islands. 40C. of Claims. 26–32.

1900–1901: "Boxer" Rebellion (Peking)

In 1900 President McKinley sent 5,000 troops to join the international military force organized for the relief of foreign legations besieged in Peking by Chinese "Boxers." Using troops already mobilized for the Spanish-American War and the Philippine Insurrection, McKinley did not seek authority from Congress. Peace terms were concluded at an international conference, and a peace Protocol was signed September 7, 1901. The Protocol was not submitted to Congress. Because of the obvious inability of Chinese authorities to control local disorders, the United States acquired the right to maintain a guard at Peking for defense of the American Legation and to station military forces at certain points in Chinese territory to keep open communications between Peking and the sea. (Earlier, in 1858, the United States had acquired the right by treaty to station naval vessels in Chinese waters.) State, 3–4.

1901: Colombia (State of Panama)

American forces went ashore in late November and stayed until December to protect American property and to keep transit lines open across the Isthmus during serious political disturbances. This apparently was authorized by the Treaty of 1846. State, 25.

1902: Colombia (State of Panama)

Marine guards landed in April to protect American lives and the railroad across the Isthmus during civil disorders. They continued to land at various times between April and November. This appears to have been authorized by the Treaty of 1846. State, 46.

1903: Honduras

American forces disembarked at Puerto Cortez in March to protect the American Consulate and port facilities during a period of revolutionary activity. State, 25.

1903: Dominican Republic

In April, 29 Marines landed at Santo Domingo, where they remained for three weeks to protect American interests during a period of political disturbances. State, 25.

1903–1904: Syria

A Marine guard landed and remained for a few days at Beirut in April to protect the American Consulate during a Moslem uprising. Also our Mediterranean Squadron demonstrated at Beirut from September to January and at Smyrna the next August. State, 25.

1903: Panama

A revolution leading to the independence of Panama from Colombia broke out in November. Marines landed from the U.S.S. *Dixie* to prevent Colombian troops from carrying out a threat to kill American citizens, after Commander Hubbard had refused to allow the Colombians to transport their troops across the Isthmus. Marine guards remained on the Isthmus from the date of Panamanian independence (November 4, 1903) until January, 1914, to protect American interests during the construction of the Canal. This was

allowed under the Hay-Bunau-Varilla Treaty. State, 25–26.

1903–1904: Abyssinia

Twenty-five American marines were sent to protect the U.S. Consul General from November 18, 1903, to January 15, 1904, while he was negotiating a treaty with the Emperor. USMC, I, 109.

1904: Dominican Republic

On January 3, 7, and 17, and on February 11, over 300 Marines landed at Puerto Plata, Sosua, and Santo Domingo to protect American lives and property during a revolt. USMC, 108–109.

1904: Morocco

A squadron demonstrated in Moroccan waters in June to force the release of a kidnapped American. A Marine contingent had landed on May 30 to protect the Consul General. State, 26.

1904: Panama

American troops were used to protect American lives and property at Ancón in November when a revolt seemed imminent. This action seems to have been authorized by treaty. State, 26.

1904–1905: Korea

In January, 1904, over 100 American troops were sent to guard the American Legation at Seoul because of the outbreak of the Russo-Japanese War. They remained until November 1905. In March, 1904, Marines assisted in the evacuation of American nationals. USMC, I, 108.

1905–1907: Dominican Republic

After the Senate failed to ratify a treaty providing that the United States should guarantee the integrity of the Dominican Republic, take charge of its customs, and settle its obligations, President T. Roosevelt nevertheless put its term into effect for two years until in 1907 the Senate ratified a slightly revised version. Berdahl, 41–42.

1906–1909: Cuba

An American squadron demonstrated off Havana, and, in September, marines landed to protect American interests during a revolution. In October, marine and army units landed and took up quarters in many Cuban towns in connection with the temporary occupation of the country under a provisional governor appointed by the United States. This occupation was within the scope of the provision of the 1903 Treaty of Relations between the two countries, which gave the United States the right to intervene to preserve order. The occupation lasted until January, 1909. State, 26.

1907: Honduras

On March 18, during a war between Honduras and Nicaragua, the U.S.S. *Marietta* disembarked 10 men to guard the American Consulate at Trujillo. The U.S.S. *Paducah* also landed forces at Laguna and Choloma on April 28. State, 26.

1910: Nicaragua

In May, one hundred men from the U.S.S. *Paducah* landed at Greytown to protect American lives and property during a revolt. The U.S.S. *Dubuque* also engaged in shows of force. Joined combat was "hourly expected.' State, 26.

1911: Honduras

Sixty men from the U.S.S. *Tacoma* and *Marietta* went ashore at Puerto Cortez during a revolt to protect American interests. The American Commander threatened to use force if necessary. State, 26.

1911–1912: China

American forces made six landings to protect American interests during the initial stages of a revolution. They were stationed at Foochow, Chinkiang, Peking, Hankow, Nanking, Shanghai, and Taku. This may have occurred pursuant to rights acquired during the "Boxer" Rebellion. State, 27.

1912: Panama

During June and July, at the request of local political groups, American troops supervised elections outside the Canal Zone. This was impliedly authorized by the Hay-Bunau-Varilla Treaty. State, 27.

1912: Cuba

In May, American troops landed in eastern Cuba during a revolt and remained for three months to protect American interests. This appears to have been authorized by the Treaty of 1903. President Taft telegraphed the President of Cuba that the action was for protection only. Hackworth, 328–329.

1912: Turkey

A troop detachment from the U.S.S. *Scorpion* assisted in the protection of the diplomatic corps at Istanbul during the Balkan War. State, 27.

1912: Nicaragua

During a civil war, the President of Nicaragua asked the United States to protect its citizens resident there. Acting on a recommendation of the American Minister, President Taft ordered sizable landings of marines in August and September, 1912. Political stability returned to Nicaragua by January, 1913, but a detachment of marines was kept in Managua to guard the American Legation after the rest of the American troops withdrew. The Legation guard was reinforced in 1922 and remained until August 1, 1925. State, 27.

1913: China

U.S. forces landed in July at Chapei and Shanghai to protect American interests. Rogers reports there were many demonstrations and landing parties by United States forces for protection in China continuously from 1912 to 1941. He writes: "In 1927, for example this country had 5,670 troops ashore in China and 44 naval vessels in its waters. In 1933 we had 3,027 armed men ashore. All this protective action was in general terms based on agreements with China ranging from 1858 to 1901." Rogers, 117.

1913: Mexico

In September a few Marines disembarked at Ciaris Estero, during a period of civil strife, to aid in the evacuation of American citizens. State, 27.

1914: Haiti

Marines landed in January, February, and August to protect American citizens during a period of unrest. State, 27.

1914: Dominican Republic

During a period of revolutionary activity, U.S. naval forces fired at revolutionaries who were bombarding Puerto Plata, in order to stop the action. Also, by a threat of force, fighting in Santo Domingo was prevented. State, 28.

1914: Occupation of Vera Cruz, Mexico

On April 9, 1914, an American naval officer and 9 crewmen from the U.S.S. *Dolphin* anchored off the coast at Tampico, Mexico, were arrested and marched through the streets by local authorities. They were released and an apology was extended as soon as the local Mexican commander learned of the incident. Admiral Mayo, commander of the American squadron, also demanded a 21-gun salute to the American flag. The Mexicans refused and President Wilson promptly ordered the North Atlantic battleship fleet to Tampico. On April 20, he addressed Congress in a joint session and asked for authority to use the armed forces. While Congress debated, Wilson learned that a German steamer was headed toward Vera Cruz to unload munitions for Huerta, and he decided to direct the naval action against Vera Cruz, and, after an armed engagement resulting in 400 casualties, the Americans occupied the city on April 21. On April 22, Congress passed a joint resolution which declared that the President was "justified in the employment of the armed forces of the United States to enforce his demand for unequivocal amends for certain affronts and indignities committed against the United States," but that "the United States disclaimed any hostility to the Mexican people or any purpose to make war upon Mexico." By November 23, 1914, American troops had left Mexican soil. State, 4.

1915: Dominican Republic

On August 15, the 5th Marine Regiment arrived at Puerto Plata to protect American lives and property during a revolutionary outbreak. Their protective mission lasted until October 12, 1915.

1915–1934: Haiti

In July, at the initiative of the Executive, the United States placed Haiti under the military and financial administration of the United States, in part to protect American lives and property and in part to forestall European intervention to collect debts. Marines were stationed in Haiti until 1934. The occupation was sanctioned by a treaty consented to by the Senate in February, 1916, but the first months of the occupation were on executive authority alone. State, 28.

1916–1924: Dominican Republic

President Wilson ordered the occupation of Santo Domingo in May, 1916, owing to local unrest. At one point, 3,000 marines were ashore. The United States placed a military governor in the Dominican Republic but turned political affairs over to the Dominicans in 1922. U.S. troops withdrew in 1924, and a general treaty signed that year formally sanctioned the previous occupation. The Convention of February 8, 1907, also appears to have authorized the landing of U.S. troops. State, 28.

1916: China

American forces landed at Nanking to quell a riot taking place on American property. Apparently this was authorized by an international agreement. State. 28.

1916–1917: Pershing Expedition into Mexico

In October, 1915, the United States recognized the Carranza regime as the *de facto* government in Mexico. At the same time, Mexican rebel, Pancho Villa, directed a campaign against the United States. In January, 1916, Villa's followers massacred 18 American mining engineers in Santa Ysbel, Mexico.

Then, on March 9, 1916, 400 of Villa's men raided Columbia, New Mexico, and killed 17 Americans. The American public was incensed, and Wilson delayed sending an expedition only until he could obtain Carranza's consent. On March 13, 1916, when Carranza's government acceded, Wilson ordered General John J. Pershing to take U.S. Army units into Mexico. On March 16, Pershing crossed the border with 6,000 troops. On the following day, Congress adopted a joint resolution introduced by Senator Robert LaFollette sanctioning the use of the armed forces. Until then, Wilson had been relying on claims of authority under the Acts of 1795 and 1807 relative to employing the armed forces whenever there is "imminent danger of invasion."

Villa eluded Pershing, and the size of the U.S. expedition soon grew to such proportions (12,000 men) that Carranza protested and demanded its withdrawal, threatening war. Wilson on June 18 called out the National

Guard and incorporated it into the Army; 150,000 militia were ordered to the Mexican border. But neither country really wanted war, and the crisis gradually subsided. Wilson decided to withdraw all American troops from Mexico in February, 1917. State, 5–6.

1917: Armed Atlantic Merchant Ships

In February, President Wilson asked Congress for authority to arm U.S. merchant vessels with defensive guns, but Congress refused to pass such a law. Thereupon President Wilson acted, on his own authority, to equip American merchant vessels with guns and gunners assigned to them from the Navy. His action occurred prior to the declaration of war on Germany which did not take place until April 6, 1917. Willoughby, III, 1568.

1917: Cuba

American troops landed in February at Manzanilla to protect American interests during a revolt. Various other landings were made, and, though the revolt ended in April, 1917, troops remained until 1922 because of continued unsettled political conditions. This was authorized by the Treaty of 1903. State, 28.

1917: China

On December 3 and 4, American troops landed at Chungking to protect American lives during a political crisis. Apparently this was done pursuant to the Treaty of June 18, 1858, and the Boxer Protocol of September 7, 1901. Hackworth, 332.

1918–1919: Mexico

U.S. troops entered Mexico to pursue bandits three times in 1918 and six times in 1919. In August, 1918, there was a brief skirmish between American and Mexican troops at Nogales. State, 28.

1918–1920: Expeditions to Russia

Following the Bolshevik revolution in Russia in 1917, Allied expeditions landed, in 1918, at Murmansk and then Archangel. American troops first landed in August, 1918, with most arriving in Archangel Harbor on September 4. Though Armistice Day came on November 11, 1918, the American forces remained until June 27, 1919. At Archangel, the U.S. contributed some 5,208 men and suffered some 549 casualties, including 244 deaths.

The Allies also landed units in Siberia in August and September of 1918 where Bolshevik troops were fighting a force of 65,000 Czech soldiers who were trying to fight their way eastward. The Japanese sent 74,000 soldiers; the Americans sent 8,388; and the British and French provided minor contingents. The American forces began embarking for home on January 17, 1920, and the last units left on April 1, 1920.

President Wilson, who acted without Congressional approval, agreed to participate in the Allied expeditions to aid the anti-Bolsheviks, to help several thousands of Czech troops get back to their homeland, and to forestall possible Japanese expansionist plans in Siberia. State, 6.

1919: Dalmatia

At the request of Italian authorities, U.S. bluejackets were landed at Trau, September, 1919, in order to police order between the Italians and the Serbs. The action, which was entirely without the previous knowledge or consent of Congress, was an extension of the Constitutional principle of police supervision as earlier applied in the zone of the Caribbean. Berdahl, 56.

1919: Turkey

On May 14, a Marine detachment from the U.S.S. *Arizona* landed to guard the U.S. Consulate at Constantinople during the Greek occupation of the city. USMC, I, 121.

1919: Honduras

A small American force went ashore at Puerto Cortez to maintain order in neutral zone during an attempted revolt. State, 29.

1918–1920: Panama

American troops went outside the Canal Zone, on request of the Panamanian Government, to supervise elections and police the Province of Chiriqui. This was authorized by the Convention of November 18, 1903. Hackworth, 331.

1920: China

In March and August, American forces landed at Kiukiang and Youchow to protect American lives and property. This appears to have been authorized by international agreement. Hackworth, 332.

1920: Guatemala

Forty men from the U.S.S. *Tacoma* and *Niagara* went inland to Guatemala City to protect the American Legation and other American interests during local fighting, but were withdrawn after about 10 days. State, 29.

1920–1922: Siberia

The United States stationed a marine guard on Russian Island, Bay of Vladivostok, to protect United States radio facilities and other property. State, 29.

1921: Panama-Costa Rica

American naval squadrons demonstrated for one day on both sides of the Isthmus to prevent war between the two countries over a boundary dispute. This was impliedly authorized by treaty. State, 29.

1922: Turkey

In September forces from several American warships went ashore with the consent of both Greek and Turkish authorities to protect American interests when the Turkish forces were advancing on the city of Smyrna. Hackworth, 333.

1922–1923: China

There were five landings by Marines from April, 1922, to November, 1923 (at Peking, Tientsin, Taku, Tungshan, and Masu Island) to protect Americans during periods of unrest. This appears to have been authorized by international agreements. USMC, I, 122–123.

1924–1925: Honduras

There were intermittent landings from February, 1924, to April, 1925, to protect American lives and property during local unrest. In March, 1924, the *Denver* put ashore 167 men and in September, the U.S.S. *Rochester* landed 111 additional forces. USMC, I, 123–124.

1924–1925: China

From September, 1924, to June, 1925, over seven landings were made by the Marines at Shanghai to protect Americans during a period of unrest. This appears to have been authorized by international agreement. USMC, I, 124–125; Hackworth, 332–333.

1925: Panama

As a result of strikes and rent riots, and at the request of Panamanian officials, 600 troops from the Canal Zone entered Panama City in October and remained for 11 days to maintain order. This conformed to American treaty rights. State, 29.

1926–1933: Nicaragua

When local disturbances broke out in 1926, the Nicaraguan Government requested that American forces undertake to protect lives and property of Americans and other foreigners. In 1927, five thousand soldiers were put ashore.

Rebel political leader, Sandino, who received Communist propaganda and financial support, turned the situation into a real civil war. In January, 1928, Sandino was forced to flee to Mexico by Marine forces, but backed by Communist aid, he returned in 1930 and Nicaragua flared again. By 1933 an all-Nicaraguan Guardia Nacional became strong enough so that all U.S. Marines could leave. In all the marines had engaged in 150 clashes and lost 97 men, 32 in action. Rebel losses were approximately over a thousand.

The occupation was initiated entirely on the executive responsibility of President Coolidge. The Democrat minority bitterly criticized his policy as a "private war" and as "imperialism," but did not question the President's authority. State, 6–7; and Dupuy and Baumer, 168.

1926: China

American forces landed at Mankow in August and September and at Chingwangtao in November to protect American interest. This appears to have been authorized by international agreement. State, 29.

1927–1928: Armed Actions in China

Anti-foreign incidents in China reached a climax in 1927.

In February, a U.S. expeditionary battalion landed at Chaighai and in March, 1,228 marine reinforcements landed there. By the end of 1927, the United States had 44 naval vessels in Chinese waters and 5,670 men ashore. In 1928, when the Nationalists had gained greater control over Chinese territory and purged themselves of Communist support, the United States reached a separate accord with them and, in July, signed a treaty which constituted United States recognition of the Nationalist Government. A gradual reduction of United States forces in China began in the same month. State, 7–8.

1932: China

In February, American forces landed at Shanghai to protect American interests during the Japanese occupation of the city, apparently under treaty. State, 30.

1933: Cuba

During a revolution, United States naval forces demonstrated offshore but no forces landed. This was pursuant to the Treaty of 1903. State, 30.

1934: China

In January, marines from the U.S.S. *Tulsa* landed at Foochow to protect the American Consulate, apparently pursuant to treaty rights. USMC, I, 129.

1936: Spain

From July 27, through September 19, the *Quincy*, carrying a marine guard, served in the Spanish war zone. The vessel touched at several ports, sometimes evacuating American nationals. (Master rolls.)

1937–1938: China

Beginning on August 12, 1937, several marine landings were made at Shanghai to protect American interests during Sino-Japanese hostilities. Marine strength in China, assigned under the International Defense Scheme, reached 2,536 men by September 19. USMC, II, 2–3.

1940: British Possessions in Western Atlantic

On September 3, President Roosevelt informed Congress that he had agreed to deliver a flotilla of destroyers to Great Britain in exchange for a series of military bases granted us on British soil along the Western Atlantic. American troops and ships occupied a number of these points in the following months. The President did not ask approval from Congress. State, 8–9.

1941: Greenland (Denmark)

In April, after the German invasion of Denmark, the U.S. Army occupied Greenland under agreement with the local authorities. Congress was not consulted and the action appears to be contrary to an

express Congressional limitation on using troops outside the Western Hemisphere. State, 8–9.

1941: Iceland

By Presidential order, U.S. troops occupied Iceland on July 7, the same day Congress was notified. The President did not consult Congress in advance, and, in fact, the action clearly violated an express restriction that Congress had enacted a year before. Both the Reserves Act of 1940 and the Selective Service Act of 1940 provided that United States troops could not be used outside the Western Hemisphere. Iceland is generally placed with the section on Europe in each World Atlas and is some 2,300 miles away from the United States. State, 8–9.

1941: Dutch Guiana

In November, the President ordered American troops to occupy Dutch Guiana by agreement with the Netherlands Government-in-exile. Again there was no Congressional authority for the military occupation. State, 8–9.

1941: Atlantic Convoys

By July 7, President Roosevelt had ordered U.S. warships to convoy supplies sent to Europe to protect military aid to Britain and Russia. By September, our ships were attacking German submarines. There was no authorization from Congress. Corwin, 203.

1946: Trieste

In July, during the Italian-Yugoslav border dispute in the Trieste area, U.S. Naval units were dispatched to the scene with open warfare imminent. After the Yugoslavs forced down on August 9, and then shot down on August 19, unarmed U.S. Army transport planes flying over the former Italian province of Venezia Giulia. President Truman ordered our troops along the Morgan Line of zonal occupation augmented and the reinforcement of our air forces in northern Italy. The Yugoslav-Russian offensive against Trieste then quieted. Acheson, 195–196.

1946: Turkey

On August 7, Russia demanded that Turkey allow it to participate in the "defense" of the Straits. On August 14, President Truman met with his chief advisers and approved their recommendation to send a powerful naval force, including the supercarrier *Franklin D. Roosevelt*, to join the *U.S.S. Missouri* at Istanbul as an affirmation of U.S. intentions to resist the Russian move against Turkey and the Straits. President Truman informed his advisers that he understood fully that the action could lead to war, but that nevertheless he was determined to prevent Soviet domination of the area. Acheson, 195, 196.

1946: Greece

In September, during the attempted Communist takeover of Greece, naval units were requested by the U.S. Ambassador. One carrier was on the scene. USN, 15712.

1948: Palestine

On July 18, a Marine consular guard was detached from the *U.S.S. Kearsarge* and sent to Jerusalem to protect the U.S. Consular General there. One consular official was assassinated and two Marines were wounded during the Arab-Israeli War. USMC, III, 7.

1948: Mediterranean

On January 7, Fleet Admiral Nimitz implied Marine reinforcements sent from the U.S. to Mediterranean waters served as a warning to Yugoslavia that the 5,000 U.S. Army troops in Trieste were not to be molested USMC, III, 5.

1948–1949: China

A platoon of Marines was sent to Nanking on November, 1948, to protect the American Embassy when the fall of the city to Communist troops was imminent. The guard was withdrawn on April 21, 1949. In November and December, Marines were sent to Shanghai to aid in the evacuation of American Nationals and to protect the 2,500 Americans in the Communist encircled city. USMC, III, 8–9.

1950–1953: Korean Conflict

Communist armies of North Korea invaded South Korea on June 25, 1950. Later that day the United Nations Security Council denounced the aggression, called for an immediate cease-fire, and asked member nations "to render every assistance to the United Nations in the execution of this resolution." On June 27 President Truman announced that he had "ordered United States air and sea forces to give the Korean Government troops cover and support" and had ordered the Seventh Fleet to prevent any attack on Formosa and also to prevent the Chinese Government on Formosa from conducting any air and sea operations against the Communist mainland. The Security Council, on the same day, adopted a resolution "that the members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."

The Department of State prepared a memorandum, on July 3, 1950, which defended the authority of the President to take the necessary action to repel the attack on Korea, using the argument that the "President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof."

Truce talks began in July, 1951, but it was not until July, 1953, that an armistice was signed. State, 9–11.

1954–1955: Tachen Islands (China)

From July, 1954, to February, 1955, U.S. Naval units were employed in evacuation of U.S. civilians and military personnel. Five carriers were on the scene. USN, 15712.

1956: Egypt

On November 1 and 2, a Marine battalion evacuated over 1,500 persons, mostly U.S. nationals, from Alexandria, Egypt, during the Suez crisis. USMC, III, 34.

1957: Indonesia

On February 14, the 3rd Marines took up station 550 miles northeast of Sumatra ready to intervene to protect U.S. nationals during the Indonesian revolt. USMC, III, 34.

1957: Taiwan

During Communist shelling of Kinmen Island in July, naval units were dispatched to defend Taiwan. Four carriers were on the scene. USN, 15712.

1958: Venezuela

In January, when mob violence erupted in Caracas, a company of marines embarked on board the *U.S.S. Des Moines* and remained on station off Venezuela ready to protect American interests. USMC, III, 36.

1958: Indonesia

In March, a Marine Company, attack squadron, and helicopter squadron were deployed with elements of the Seventh Fleet off Indonesia prepared to protect U.S. citizens and interests. USMC, III, 36.

1958: Lebanon Operation

A period of civil unrest began in Lebanon in May, 1958, led by Moslems who reportedly aided by the United Arab Republic's President Nasser. When a pro-Nasser coup took place in Iraq July 14, President Chamoun of Lebanon appealed for assistance to President Eisenhower. On July 15 President Eisenhower sent 5,000 marines to Beirut to "protect American lives" and to "assist" Lebanon in preserving its political independence. The President publicly stressed the provocative Soviet as well as Cairo radio broadcasts. Eventually, 14,000 American soldiers and marines occupied strategic areas in Lebanon, but with orders not to shoot unless shot at.

On the day of the initial landings, the United States asked the United Nations Security Council to establish an international police force to preserve Lebanon's independence, but the Soviet delegate vetoed the American resolution. Further, the Soviet Union announced that it would hold military maneuvers near the Turkish and Iranian frontiers.

On August 21, the General Assembly passed a resolution calling on the member states to respect one another's territorial integrity and observe strict non-interference in one another's affairs. The resolution requested that practical arrangements be made leading to the withdrawal of troops from Lebanon. On September 26, the United States notified the Secretary-General of the United Nations that it had been possible to withdraw a portion of the American forces and to work out a schedule to withdraw the remainder by the end of October. State, 11–12.

1959–1960: Cuba

In the period from November 20, 1959, to February 15, 1960, the 2d Marine Ground Task Force was deployed to protect U.S. nationals during the Cuban crisis. USMC, III, 42.

1961: Show of naval force in Dominican waters

On May 30, Dominican dictator Rafael Trujillo was assassinated. Political conditions in the Dominican Republic steadily deteriorated during the summer and early autumn. Then, on November 15, General Hector Trujillo and General Jose Trujillo, brothers of the slain dictator, returned to the island. Secretary Rusk stated three days later they appeared "to be planning an attempt to reassert the dictatorial domination of the political and economic life of the country . . ." He added: "the United States is considering the further measures that unpredictable events might warrant."

On November 19, U.S. Navy ships took up positions three miles off the Dominican coast and Navy jet planes patrolled the shoreline. The show of force produced the desired result because the Trujillo brothers and other members of the family departed for Miami before the day was over. According to one authority, "It later transpired that the Kennedy Administration was prepared to order U.S. marines ashore if President Joaquin Balaguer had so requested or if the Trujillos had outsted Balaguer from the presidency." ERR, 449–500.

1962: Thailand

On May 17, the 3d Marine Expeditionary Unit landed in Thailand to support that country during the threat of Communist pressure from outside. On July 1, President Kennedy ordered 1,000 Marines in Thailand to return to their ships, and on July 30, the U.S. completed the withdrawal of the 5,000 Marines sent there. USMC, III, 56–57.

1962: Cuban naval quarantine

On October 24, confronted with a build-up of Soviet surface-to-surface missile bases in Cuba, President Kennedy ordered a quarantine 500 miles wide in the waters around Cuba. The blockade was aimed both at preventing delivery of additional Russian missiles and obtaining the removal of those offensive Russian weapons already in Cuba.

The crisis appears to date from Tuesday, October 16, when the Government's inner circles first began to discuss the idea of a blockade. On October 20, the First Armored Division began to move out of Texas into Georgia, and five more divisions were placed

on alert. The Navy deployed 180 ships into the Caribbean. The Strategic Air Command was dispersed to civilian airfields and a B–52 bomber force was ordered into the air fully loaded with atomic bombs.

On October 22, President Kennedy went on television to explain before the nation the situation in Cuba and the reasons for the quarantine. The President first notified Members of Congress that same day. On Tuesday, the 23, the Council of the Organization of American States formally authorized by a unanimous vote "the use of armed forces" to carry out the quarantine of Cuba. Apparently, one day later the blockade went into effect.

Other notable dates include October 27, when the Defense Department announced that 24 troop-carrier squadrons of the Air Force Reserve were being recalled to active duty; October 28, when Premier Khrushchev in a message to President Kennedy, announced he had ordered the dismantling of Soviet missile bases in Cuba; November 11, when Deputy Secretary of Defense Gilpatric announced the United States had counted 42 medium-range missiles being removed from Cuba on Soviet ships; and November 20, when President Kennedy announced he had ordered the lifting of the naval blockade.

On December 6, U.S. Navy planes verified that 42 Soviet jet bombers were being transported home from Cuba. The United States apparently closed the book on the Cuban crisis about this date. LRS, I, 24–25; and LRS, II, 1–18.

1963: Haiti

On May 4, a Marine battalion was positioned off the coast of Haiti for five days when trouble developed in that country. USMC, III, 61.

1964: Congo

In August the United States sent four C–130 transport planes with approximately 100 flight and maintenance crews and paratroopers to protect the aircraft while on the ground. The purpose was said to be to provide airlift for the regular Congolese troops to combat areas during a rebellion against the government of Premier Tshombé and President Kasavubu. Earlier, in July, the United States had sent 68 officers and men to Leopoldville to advise the Congolese army. Both actions followed the withdrawal on June 30 of the last of the 20,000-man force which the United Nations had placed in the Congo in order to keep the peace.

Subsequently, in November, rebels in the Stanleyville area held over a thousand foreign civilian hostages, including 60 Americans, who were subjected to many atrocities and whom the rebels threatened to kill. When negotiations between the rebels and the United States failed, the United States and Belgium arranged to land Belgian paratroopers to undertake a humanitarian rescue operation.

On November 24, the force was airdropped by U.S. transport aircraft in the Stanleyville area and liberated most of the hostages. Belgian paratropers undertook a second rescue operation on November 26, capturing the rebel town of Paulis. In all, about 2,000 foreigners were rescued. President Johnson assumed "full responsibility" for the United States role in the decision to transport the Belgian troops in American planes. Davids, 296–310.

1964–1973: Armed Actions in Laos

At the request of the Laotian Government, unarmed United States jet planes began flying reconnaissance missions over the Plaines de Jarres in May, 1964, in order to gather information on rebellious forces headed by leftist Pathet Lao. After two jets were shot down on June 6 and 7, President Johnson decided to carry out a limited reprisal. On June 9, U. S. Navy jets attacked a Communist gun position in north central Laos, and this was followed by 36 "sorties" which knocked out a number of Communist posts. The United States has continued to play a role of air support in Laos to date. State, 30.

1964–1973: Armed Action in Vietnam

Following the Geneva Accords of 1954 which provisionally divided Vietnam at approximately the 17th parallel, the Communists held control of the northern half of the country while anti-Communists maintained a precarious hold on the south. A U. S. Military Assistance Advisory Group, which assumed responsibility for the training of the South Vietnamese army after the French relinquished command, was steadily expanded as Communist guerrilla activity supported and directed from the north intensified. By 1962 there were 12,000 U. S. advisors.

In August, 1964, at the request of President Johnson following an attack on American naval vessels in the Gulf of Tonkin, Congress passed the Gulf of Tonkin Resolution, unanimously in the House and by a vote of 88–2 in the Senate. The Resolution expressed approval and support of "the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." Also it provided the United States is "prepared as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom." (South Vietnam is a protocol state of SEATO.) The joint resolution was signed into law on August 10 as Public Law 88–408.

Both this resolution and the SEATO agreement itself have been claimed as authority for United States activities in Vietnam. In addition, several appropriations laws providing for support of the hostilities in Southeast Asia have been judicially determined to represent authority for our engagement there. The Tonkin Gulf Resolution was subsequently repealed by P.L. 91–672 (Jan. 12, 1971).

Since assuming office in January, 1969, President Nixon has ordered the withdrawal of almost 550,000 troops. A peace agreement ending U.S. involvement in the war was announced on January 23, 1973. State, 12–14.

1965: Dominican Republic

A revolt broke out in the Dominican Republic on April 24, 1965, and on April 28 President Johnson announced that Dominican military authorities had requested assistance from the United States in protecting the lives of United States citizens living in that country. The President added that he had ordered the Secretary of Defense to put the necessary troops ashore to protect Americans and that this assistance would be available to the nationals of other countries as well.

The first United States military contingent to the Dominican Republic consisted of 400 men. On May 2 the President announced that he was sending 200 more men immediately and that an additional 4,500 would go at the earliest possible moment. He cited the increasing Communist control of the revolutionaries, as well as the urgent need for food, medical supplies, and other humanitarian assistance to the Dominican people, as reasons for his decision. At their peak 21,500 United States troops were in the Dominican Republic.

On May 5, a five-man OAS peace commission succeeded in achieving a cease-fire agreement among the contending forces and on May 6 the OAS voted to create an Inter-American Peace Force to assist in restoring peace and order. The arrival on May 21 of the first contingent of a Brazilian force permitted the withdrawal of 1,700 United States troops, and as other foreign contingents arrived, additional United States troops were withdrawn. By the end of 1965, the Inter-American Peace Force totaled 9,400. In the meantime, a formula to restore constitutional government, worked out by an OAS Ad Hoc Commission, made considerable progress. The inauguration of a civilian, Hector Garcia Godoy, as provisional president on September 3, 1965, was a major step toward the restoration of stability. State, 14–15.

1967: Syrian Coast

In June of 1967, during the Arab-Israeli War, President Johnson ordered the U.S. 6th Fleet to move to within 50 miles of the Syrian Coast as a message to the Soviet Union it "would have to deal with us" if it entered the conflict. The action was taken as a counter move against the Soviet Union after Premier Kosygin told President Johnson over the hotline that the Soviets had reached an "independent decision" that they were prepared to take "necessary actions, including military" to stop the advance of Israeli troops into Arab territory, and would give the Israelis just five hours to unconditionally halt their operations. Star, D–4; Johnson, 302.

1967: Congo

In July, Lt. General Mabutu, who had now become President of the Congo, was challenged by a revolt of about 170 white mercenaries and a few hundred Katangese troops. The Congolese army numbered around 32,000, but required outside logistical support in order to crush the revolt.

Responding to a direct appeal from President Mabutu, on July 8 the United States sent three C–130 military transport aircraft to the Congo, with their crews, to provide the Ceneral Government with "long-range logistical support." Approximately 150 American military men arrived with the planes.

The small American task force immediately began to drop several plane loads of paratropers and their equipment and continued to fly troops until November. On July 15, the first aircraft was withdrawn; on August 4, the second; and on December, the last. LRS, III.

1970: Cambodia

From April 30 to June 30, U.S. troops attacked Communist sanctuaries in order to ensure the success of the program of Vietnamization. LRS, IV, 57.

1970: Jordanian-Syrian Crisis.[2]

On September 17, King Hussein of Jordan moved against Palestinian guerrillas in an effort to reassert the royal authority. Despite a warning by President Nixon, talking to newspaper editors in Chicago, that the U.S. might intervene if Syria or Iraqu threatened King Hussein's Government, some 300 Syrian tanks crossed into Jordan during the

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[2] Eight military engagements which were subsequently disavowed or repudiated have been omitted from the above list of precedents. These are:

1812: Amelia Island, Spanish territory. United States disvowed General Matthews' occupation of the area when he made himself the head of a revolutionary party. State, 16.

1824: Puerto Rico, Spanish territory. Commodore Porter was later courtmartialed for exceeding his powers when he forced an apology from a group of pirates who had insulted American naval officers. State, 17.

next three days. Secretary Rogers condemned the Syrian invasion and the U.S. called on the Soviet Union to use its influence to persuade Syria to pull out.

President Nixon moved the Sixth Fleet off the Israeli-Lebanese coast and publicity was given to the dispatch of the helicopter carrier Guam with 1,500 marines to join the Sixth Fleet, to the alert of the 82d Airborne Division in Fort Bragg, N.C., and to the alert of two airborne battalions of the Eighth Infantry Division in West Germany. At the same time the Israelis began a partial mobilization and movements of tanks toward the northern part of the Jordan River Valley in position to attack the Syrian invaders. The U.S. apparently was prepared to intervene militarily, in coordination with Israel, to prevent the overthrow of King Hussein's Government and to rescue 38 American hostages known to be in the hands of Palestinian guerrillas. By September 22, Syrian tanks began withdrawing and on September 25, the crisis ended when King Hussein and Yasir Arafat, the guerrilla chief, agreed on a ceasefire. N.Y. Times, Oct. 8, 1970, at 1, 12.

1842: Mexico. Commodore T.A.C. Jones occupied Monterey in the mistaken belief that war had started between the United States and Mexico. He withdrew and saluted, thereby disavowing his action. State, 18.

1857: Nicaragua. An American naval commander compelled the leader of a rebel group who was trying to seize Nicaragua to leave the country. The American commander's action was tacitly disavowed by the Secretary of State and apparently repudiated by President Buchanan. State, 20.

1866: Mexico. After General Sedgwich obtained the surrender of the Mexican border town of Matamoras, he was ordered to withdraw and his act was repudiated by the President. State, 22.

Late 1880's: Bering Sea. The United States paid nearly $500,000 to Britain in damages resulting from the seizure of British sealers by United States patrol boats outside the three mile limit. U.S., 586.

1893: Hawaii. On January 16, Marines from the schooner *U.S.S. Boston* landed at Honolulu and were dispatched until April 1 to protect American lives and property, after the deposition of Queen Liliuokalani. The action was later disavowed by the United States. LRS, III, 53.

1912: Honduras. A small naval force landed at Puerto Cortez to protect an American-owned railroad there. Apparently Washington disapproved and the men were withdrawn in a day or two. State, 27.

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B. Five U.S. military actions abroad under a declaration of war

War of 1812 (1812–15)

On June 18, Congress approved a declaration of war against England. The war was officially concluded by the Treaty of Ghent, December 24, 1814, but the major battle of the war occurred with an American victory at New Orleans in January, 1815.

War Between the United States and Mexico (1846–48)

Congress declared war on May 11, 1846. The Treaty of Guadalupe Hidalgo ended the conflict on February 2, 1848.

Spanish-American War (1898)

On April 25, 1898, the United States declared war against Spain. The peace treaty ending hostilities was signed in Paris on December 10, 1898.

World War I (1917–19)

The United States declared war on Germany on April 6, 1917, and against Austria on December 7, 1917. The Treaty of Versailles was signed on June 28, 1919. The treaty was never ratified by the United States.

World War II (1941–45)

The United States declared war on Japan, December 8, 1941, and on Germany and Italy, December 11, 1941. The war ended in Europe on May 8, 1945. Japan signed the formal surrender in Asia on September 2, 1945.

C. Fifty major military actions for broad strategic aims

1798–1800: Naval War with France. The U.S. fought primarily for the protection of its free commerce.

1801–1805: War with Tripoli. The U.S. upheld its right of free commerce.

1814–1825: Caribbean Area. The U.S. sunk or captured 65 vessels to protect American commerce.

1815: Second Barbary War. The U.S. acted to provide effective protection to American commerce.

1844: Mexico. President Tyler deployed our troops to protect Texas one year before annexation.

1846: Mexico. President Polk ordered General Scott to occupy disputed territory between the Nueces and the Rio Grande.

1853–1854: Japan. Commodore Perry's expedition of 2000 men and ten ships advanced American commercial interests.

1858: Cuban waters. President Buchanan ordered a naval force to Cuban waters to protect all vessels of the U.S. on the high seas from search or detention by the vessels of war of any other nation.

1864: Japan. U.S. Naval units participated in a joint effort to force open the Straits of Shimonoseki for the free conduct of international commerce.

1865–1866: Mexican border. General Sheridan and 50,000 U.S. troops backed up a demand from Secretary of State Seward that French forces withdraw from Mexico.

1869–1871: Dominican Republic. President Grant sent a strong naval force to protect the Dominican Republic during his efforts to annex the island.

1888–1889: Samoan Islands. Germany and the United States were close to warfare due to their rivalry over naval privileges in the Samoans.

1899–1901: Philippine Islands. The United States used 126,468 troops aganist the Philippine Insurrection in order to preserve and foster any rights it had acquired from Spain.

1900–1901: Boxer Rebellion (Peking). The U.S. sent 5000 troops and marines to relieve foreign legations in Peking and to keep open communication between Peking and the sea.

1903–1914: Panama. Marine guards landed and remained on the Isthmus to protect construction of the Canal.

1905–1907: Dominican Republic. President T. Roosevelt ordered the administration of the affairs of the Dominican Republic by the U.S. in implementation of the Monroe Doctrine.

1906–1909: Cuba. The U.S. temporarily occupied Cuba to preserve order.

1912: Cuba. American troops remained three months to preserve order.

1915–1934: Haiti. U.S. troops occupied Haiti to forestall European intervention.

1916–1924: Dominican Republic. U.S. troops occupied Santo Domingo and supported a military governor in the Dominican Republic.

[3] Only the primary sources are cited, although in several instances the summary was prepared from a composite of information published in more than one of the sources referred to herein.

1917: Armed Atlantic Merchant Ships. President Wilson armed American merchant vessels with guns and gunners assigned from the Navy.

1917: Cuba. Several American landings were made to preserve order.

1918–1920: Expeditions to Russia. The U.S. contributed some 14,000 men to aid the anti-Bolsheviks and to forestall Japanese expansionist plans in Siberia.

1919: Dalmatia. U.S. troops were landed in order to police foreign territory during disorders between the Italians and Serbs.

1926–1933: Nicaragua. The occupation of Nicaragua foiled the first attempt of Communism to infiltrate Latin America.

1927–1928: China. Nearly 6000 U.S. troops acted to help stabilize China.

1937–1938: China. Some 2500 marines helped preserve order in Shanghai under the International Defense Scheme.

1940: British possessions in Western Atlantic. U.S. occupied military bases on British soil to protect long range national security interests.

1941: Greenland. The U.S. Army occupied Greenland for the same reason as above.

1941: Iceland. U.S. troops occupied Iceland for the same reason as above.

1941: Dutch Guiana. American troops occupied Dutch Guiana for the same reason as above.

1941: Atlantic convoys. U.S. warships were used to convoy military supplies to Britain and Russia.

1946: Trieste. President Truman reinforced U.S. troops along the Italian-Yugoslav border and dispatched naval units to the scene in order to resist the Yugoslav-Russian offensive against Trieste.

1946: Turkey. As a sign of U.S. determination to resist Soviet threats against Turkey and the Straits, President Truman sent a powerful naval force to Istanbul.

1946: Greece. During the attempted Communist takeover of Greece, U.S. naval units were sent at the request of the U.S. Ambassador.

1950–1953: Korean War. U.S. forces acted to assist the Republic of Korea in order "to restore international peace and security in the area."

1957: Taiwan. U.S. naval units were dispatched to defend Taiwan.

1958: Lebanon. A primary purpose of using U.S. armed forces in Lebanon was to assist Lebanon in preserving its political independence.

1961: Dominican Waters. U.S. Navy ships took up positions three miles off the Dominican coast and Navy jet planes patrolled the shoreline to prevent a revolution in the Dominican Republic.

1962: Thailand. Some 5000 marines landed to support Thailand during a threat of external Communist aggression.

1962: Cuban Naval Quarantine. President Kennedy ordered a naval quarantine of Cuba to prevent delivery of additional Russian missiles and to obtain the removal of those already in Cuba.

1963: Haiti. A marine battalion was positioned off Haiti when trouble developed there.

1964: Congo. A task force of four U.S. C–130 transport planes with paratrooper guards was sent to the Congo to provide airlift for the regular Congolese troops against a Communist-assisted rebellion.

1964–1973: Vietnam. American forces have acted to support freedom and protect peace in Southeast Asia.

1964–1973: Laos. The United States has supported the free government of Laos, particularly with air missions.

1965: Dominican Republic. The threat of a Communist takeover and the need to provide humanitarian assistance to the Dominican people were major reasons for the American landings.

1967: Syrian Coast. During the Arab-Israeli war, the U.S. 6th Fleet moved to within 50 miles off the Syrian Coast as a sign to the Soviet Union it "would have to deal with us" if it entered the conflict.

1967: Congo. A task force of three U.S. C–130 transports and 150 men ferried Congolese paratroopers in order to crush a revolt aganst Mobutu's government.

1970: Cambodia. U.S. troops were ordered into Cambodia to assist the program of Vietnamization.

1970: President Nixon augmented and moved the Sixth Fleet off the Israeli-Lebanese coast in preparation to halt, if necessary, the Syrian invasion of Jordan and to rescue 38 American hostages.

D. Eighty-two hostilities with actual combat or ultimatums

1798–1800: Quasi-war with France.
1800: West Indies.
1801–1805: War with Tripoli.
1806: Mexico.
1806–1810: Gulf of Mexico.
1814–1825: Caribbean area.
1815: Second Barbary War.
1816–1818: Spanish Florida.
1817: Amelia Island (Spanish Territory).
1820: West Africa.
1820–1822: West Coast of South America.
1822: Cuba.
1823: Cuba.
1825: Cuban Keys.
1827: Greece.
1828: West Indies.
1830: Haiti.
1831–1832: Falkland Islands (Argentina).
1832: Sumatra.
1835: Samoan Islands.
1837: Mexico.
1840: Fiji Islands.
1841: Drummond Islands (Pacific Ocean).
1841: Samoan Islands.
1843: West Africa.
1845: African coast.
1846: Mexico.
1850: African coast.
1851: Turkey (Apparently no shots fired, but the force displayed amounted to a compulsory ultimatum).
1851: Johanna Island (East of Africa).
1853: China.
1853: West Coast of Africa.
1853: Smyrna.
1853–1854: Japan (Commodore Perry's expedition including 10 ships and 2000 men conveyed an imminent threat of using force).
1854: China.
1854: Greytown, Nicaragua.
1854: West Coast of Africa.
1854: Okinawa.
1855: China.
1855: Fiji Islands.
1855: Uruguay.
1856: China.
1858: Fiji Islands.
1858: African coast.
1859: African coast.
1859: Paraguay (The Naval display of force amounted to compulsion).
1863: Japan.
1864: Japan.
1865–1866: Mexican border (General Sheridan and 50,000 American troops backed up the demand of Secretary of State Seward that French forces leave Mexico).
1867: Formosa.
1867: Nicaragua.
1870: Mexico.
1871: Korea.
1888: Haiti (American Commander issued an ultimatum threatening force if necessary).
1888–1189: Samoan Islands (Three powers had warships on the scene during an intense rivalry over claims in the islands. War was close when a hurricane destroyed German and American vessels).
1891: Bering Sea.
1894: Brazil.
1899: Samoan Islands.
1900–1901: Boxer Rebellion (China).
1899–1901: Philippine Insurrection.
1910: Nicaragua (Armed combat was "hourly expected").
1911: Honduras (The American Commander expressly threatened to use force if necessary).
1914: Dominican Republic.
1914: Occupation of Vera Cruz, Mexico.
1915: Haiti.
1916: Dominican Republic.
1916–1917: Pershing Expedition into Mexico.
1917: Armed Atlantic merchant ships.
1918–1919: Mexico.
1918–1920: Expeditions to Russia.
1926–1933: Nicaraguan occupation.
1927–1928: Armed actions in China.
1941: Atlantic convoys.
1946: Trieste.
1948: Palestine.
1950–1953: Korean War.
1962: Cuban naval quarantine.
1964–1973: Armed actions in Laos.
1965: Dominican Republic.
1964–1973: Vietnam War.
1967: Syrian coast.
1970: Cambodia.

E. Ninety-Seven Military Actions Lasting More Than Thirty Days

1798–1800: Quasi-War with France.
1801–1805: War with Tripoli.
1806–1810: Gulf of Mexico.
1813–1814: Marquesas Islands (South Pacific).
1814–1825: Caribbean Area.
1815: Second Barbary War.
1816–1818: Spanish Florida.
1820–1822: West Coast of South America.
1823: Cuba.
1827: Greece.
1831–1832: Falkland Islands.
1835–1836: Peru.
1838–1839: Sumatra.
1843: West Africa.
1843: China.
1844: Mexico.
1846: Mexico.
1852–1853: Argentina.
1853–1854: Japan.
1854: China.
1854: Okinawa.
1855: Fiji Islands.
1855: Uruguay.
1856: China.
1858: Cuban waters.
1858–1859: Paraguay.
1858–1859: Turkey.
1865–1866: Mexican border.
1866: China.
1868: Japan.
1869–1871: Dominican Republic.
1873: Colombia.
1873: Cuban waters.
1873–1882: Mexico.
1885: Colombia.
1888–1889: Samoan Islands.
1891: Bering Sea.
1894: Nicaragua.
1894–1895: China.
1898–1899: China.
1899: Samoan Islands.
1899–1901: Philippine Islands.
1900–1901: "Boxer" Rebellion (Peking).
1901: State of Panama.
1902: State of Panama.
1903: Panama.
1903–1904: Abyssinia.
1903–1904: Syria.
1904: Dominican Republic.

1904–1905: Korea.
1906–1909: Cuba.
1907: Honduras.
1911–1912: China.
1912: Panama.
1912: Cuba.
1912: Nicaragua.
1913: China.
1914: Haiti.
1914: Vera Cruz (Mexico).
1914–1915: Dominican Republic.
1915: Occupation of Haiti.
1916: Occupation of Dominican Republic.
1916–1917: Pershing Expedition into Mexico.
1917: Armed Atlantic merchant ships.
1917: Cuba.
1918–1919: Mexico.
1918–1920: Expeditions to Russia.
1918–1920: Panama.
1920–1922: Siberia.
1922–1923: China.
1924–1925: China.
1924–1925: Honduras.
1926–1933: Nicaragua.
1926: China.
1927: China.
1936: Spain.
1937–1938: China.
1940: Occupation of British possessions in Western Atlantic.
1941: Occupation of Greenland.
1941: Occupation of Dutch Guiana.
1941: Occupation of Iceland.
1941: Atlantic convoys.
1946: Trieste.
1948: Mediterranean.
1948–1949: China.
1950–1953: Korean War.
1954–1955: Tachen Islands (China).
1958: Lebanon.
1959–1960: Cuba.
1962: Thailand.
1962: Cuban naval quarantine.
1964–1973: Laos.
1964–1973: Vietnam.
1964: Congo.
1965: Dominican Republic.
1967: Congo.
1970: Cambodia.

One hundred three military actions by the United States outside the Western Hemisphere

1801–1805: War with Tripoli.
1813–1814: Marquesas Islands (South Pacific).
1815: Second Barbary War.
1820: West Africa.
1827: Greece.
1832. Sumatra.
1835: Samoan Islands.
1838–1839: Sumatra.
1840: Fiji Islands.
1841: Drummond Island (Pacific Ocean).
1841: Samoan Islands.
1843: West Africa.
1843: China.
1844: China.
1845: African coast.
1849: Smyrna (Now Izmir, Turkey).
1850: African coast.
1851: Turkey.
1851: Johanna Island (east of Africa).
1853: China.
1853: African Coast.
1853: Smyrna.
1853–1854: Japan.
1854: African coast.
1854: Okinawa.
1854: China.
1855: China.
1855: Fiji Islands.
1856: China.
1858: Fiji Islands.
1858: African coast
1858–1859: Turkey.
1859: African coast,
1859: China.
1860: Kissembo (West Africa).
1863: Japan.
1864: Japan.
1864: Japan.
1866: China.
1867: Formosa.
1868: Japan.
1871: Korea.
1874: Hawaii.
1882: Egypt.
1888: Korea.
1888–1889: Samoan Islands.
1889: Hawaii.
1894–1896: Korea.
1894: China.
1895–1896: Korea.
1898–1899: China.
1899: Samoan Islands.
1899–1901: Philippine Islands.
1900–1901: "Boxer" Rebellion (Peking).
1903–1904: Syria.
1903–1904: Abyssinia (Ethiopia).
1904: Morocco.
1904: Korea.
1911–1912: China.
1912: Turkey.
1913: China.
1916: China.
1917: Armed Atlantic merchant ships.
1918: China.
1918–1920: Expeditions to Russia.
1919: Turkey.
1919: Dalmatia.
1920: China.
1920–1922: Siberia.
1922: Turkey.
1922–1923: China.
1924: China.
1924–1925: China.
1926: China.
1927: China.
1932: China.
1934: China.
1936: Spain.
1937–1938: China.
1941: Occupation of Greenland.
1941: Occupation of Iceland.
1941: Atlantic convoys.
1946: Turkey.
1946: Trieste.
1946: Greece.
1948: Palestine.
1948: Mediterranean.
1948–1949: China.
1950–1953: Korea.
1954–1955: Tachen Islands (China).
1956: Egypt.
1957: Indonesia.
1957: Taiwan.
1958: Indonesia.
1958: Lebanon.
1962: Thailand.
1964–1973: Laos.
1964–1973: Vietnam.
1964: Congo.
1967: Syrian coast.
1967: Congo.
1970: Cambodia.
1970: Jordanian-Syrian Crisis.

G. 81 MILITARY OPERATIONS ARGUABLY INITIATED UNDER PRIOR LEGISLATIVE AUTHORITY (NO DECLARATIONS OF WAR)

Year	Military operations	Legislation	Treaty	
1798 to 1800	Quasi-War with France	X		
1801 to 1805	War with Tripoli	X		
1813	Spanish Florida	X		
1806 to 1810	Gulf of Mexico	X		
1813 to 1814	Marquesas Islands	X		
1814 to 1825	Caribbean area	X		
1815	Second Barbary War	X		
1817	Amelia Island	X		
1820 [1]	West Africa	X		
1822	Cuba	X		
1823	Cuba	X		
1824	Cuba	X		
1825	Cuban Keys	X		
1827 [2]	Greece	X		
1828 [2]	West Indies	X		
1832 [2]	Sumatra	X		
1835 [2]	Samoan Islands	X		
1838 to 1839 [2]	Sumatra	X		
1841 [2]	Drummond Island	X		
1841 [2]	Samoan Islands	X		
1843 [1 2]	West Africa	X		
1845 [1]	African coast		X	
1850 [1]	African coast		X	
1851 [2]	Johanna Island, east of Africa.	X		
1853 [1]	African coast		X	
1854 [1]	African coast		X	
1854	Okinawa		X	
1855 [2]	China	X		
1856	Panama		X	
1858 [1]	African coast		X	
1859 [1]	African		X	
1859	Paraguay		X	
1860	Panama		X	
1864	Japan		X	
1865	Panama		X	
1867 [2]	Formosa	X		
1868	Columbia		X	
1870	Mexico	X		
1873	Columbia		X	
1885	Panama		X	
1888 to 1889	Samoan Islands	X	X	
1891	Navassa Island, Haiti	X		
1894	Brazil	X		
1895	Panama		X	
1899	Samoan Islands	X	X	
1899 to 1901	Philippine Islands		X	
1901	Panama		X	
1902	do		X	
1903	do		X	
1904	do		X	
1906	Cuba		X	
1911 to 1912	China		X	
1912	Panama		X	
1912	Cuba		X	
1913	China		X	
1914	Vera Cruz, Mexico	X		
1916	Pershing Expedition into Mexico.	X		
1916	China		X	
1917	Cuba		X	
1918	China		X	
1918 to 1920	Panama		X	
1920	China		X	
1921	Panama-Costa Rica		X	
1922 to 1923	China		X	
1924	do		X	
1924 to 1925	China		X	
1925	Panama		X	
1926	China		X	
1927	China		X	
1932	China		X	
1933	Cuba		X	
1934	China		X	
1937 to 1938	China		X	
1950 to 1953 [3]	Korean War		X	(U.N. Charter)
1957	Taiwan	X	X	
1958 [4]	Lebanon Operation	X		
1962 [5]	Cuban Naval Quarantine.		X	(OAS)
1962	Thailand		X	
1964 to 1973	Vietnam	X	X	
1964 to 1973	Laos	X	X	
1970	Cambodia	X	X	

[1] Indicates operation occurred under act of 1819 or treaty of Aug. 9, 1842, with Great Britain, both relative to the suppression of slavery.

[2] Indicates military activity may have occurred pursuant to broad interpretation of authority conferred by certain acts of Congress against piracy. See act of Mar. 3, 1819 (3 Stat. 510), act of Jan. 14, 1823 (3 Stat. 720), and act of Aug. 5, 1861 (12 Stat. 314).

[3] Though reliance was also placed on the U.N. Charter, the Truman administration based its authority to commit troops squarely on the President's independent constitutional authority. Rogers, discussion supra, footnote 55, at S7197.

[4] In fact President Eisenhower sent troops into Lebanon without seeking specific congressional approval and without specifically basing his authority on the 1957 Middle East Resolution. Id.

[5] According to Secretary of State Rogers, "the Cuban Resolution, unlike the other area resolutions contained no grant of authority to the President." Id.

Mr. GOLDWATER. Mr. President, I understand the sponsors of S. 440 would refute my interpretation of the "declaration of war" clause as a weak power. I have described the declaration throughout this discussion as meaning no more than that Congress possesses the power to proclaim its purpose of bringing the

total resources of the Nation into support of an already existing war, or that Congress may by this method provide a way by which the United States could enter into "offensive war," such as might have existed if the United States had acted under the French treaty of 1793 to join France in war with Great Britain.

In making the rebuttal, three points are raised. One is a quotation by Alexander Hamilton relative to the position of the President as Commander in Chief, the second is Thomas Jefferson's famous remark about the "Dog of War," and the third is a statement taken from the Civil War "Prize Cases."

Mr. President, I wish to respond to each of these three points because they illustrate the misunderstanding which in my opinion exists among the sponsors of the legislation with respect to the true purpose of the Founding Fathers. First, let us examine the comment by Alexander Hamilton, in the Federalist No. 69, that the President's function as Commander in Chief is only one of "the supreme command and direction of the military and naval forces." Now, I would ask, Mr. President, if this power alone is not enough to indicate that Congress cannot exercise policy control over the use of the Armed Forces? Certainly, there cannot be two supreme heads of the military and naval forces.

As I have discussed earlier in the debate, Hamilton wrote in a later Federalist Paper, No. 73, a clarification of exactly what he meant by professing that the President retains "the supreme command and direction" over the military forces In Federalist 73, he wrote:

> Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of executive authority.

In other words, Mr. President, Hamilton meant that the direction of military affairs must be managed by a single hand, not by 535 Members of Congress, in order that the Nation could act with promptness, directness, and unity of action.

To argue, as the sponsors of S. 440 do, that Hamilton's mere reference to the declaring of war as appertaining to the legislature means that Congress was thereby given the sole power to go to war is to make an assumption about the whole meaning of the declaration clause which Hamilton himself never made.

Second, I have heard reference made on many occasions by the sponsors of war powers legislation to a statement made by Thomas Jefferson in a letter he wrote to James Madison in 1789, wherein Jefferson stated that:

> We have already given in example one effectual check to the Dog of War by transferring the power of letting him loose from the Executive to the legislative body, from those who are to spend to those who are to pay.

But Madison himself directly contradicted the implication which the sponsors of S. 440 are making from this sentence, which was written in the heat of a debate then occurring between Jefferson and Hamilton over the President's war powers. I would refer my colleagues to the Federalist No. 38, where Madison reveals that the Framers had intentionally removed the direction of war from Congress, where it had been placed under the Articles of Confederation, because, in his words, it is—

> Particularly dangerous to give the keys of the Treasury and the command of the army into the same hands.

In the Federalist No. 19, written by Madison and Hamilton jointly, Madison had also given evidence that the Founding Fathers did not intend to place the sole power to go to war in Congress. Here Madison clearly states that the Constitutional Convention had specifically rejected as a political model, because of its inherent weakness, the example of a then current form of government used in Europe in which the Diet, or legislative body, was vested with the power to make or commence war.

Madison wrote:

> Military preparations must be preceded by so many tedious discussions. That before the Diet can settle the arrangements the enemy are in the field.

Mr. President, I also would like to observe that a major change of view occurred in the position of Thomas Jefferson himself, who later openly admitted his earlier error in believing that the United States could check "the Dog of War" whatever the trend of world events elsewhere. In a letter which he wrote on March 2, 1815, Jefferson acknowledged:

> I had persuaded myself that a nation, distant as we are from the contentions of Europe, avoiding all offences to other powers, and not over-hasty in resenting offence from them, doing justice to all, faithfully fulfilling the duties of neutrality, performing all offices of amity, and administering to their interests by the benefits of our commerce, that such a nation, I say, might expect to live in peace, and consider itself merely as a member of the great family of mankind . . . But experience has shown that continued peace depends not merely on our own justice and prudence, but on that of others also.

Mr. President, this reflects the same practical attitude which guided the Founding Fathers in the formation of the new Republic. However much the Founding Fathers may have wished to live by a policy of avoiding foreign troubles, they recognized from having witnessed the great weakness in the management of military affairs by the Continental Congress, that the Nation cannot be safe unless there is a single Commander in Chief with an unrestricted discretion to resist foreign dangers whenever and wherever they may exist.

Third, the decision of the Supreme Court in the "Prize Cases" is relied upon as authority for the proposition that Congress may curb the Executive's commitment of military force. The decision involved the legality of President Lincoln's naval blockade against the Confederacy. The sponsors of S. 440 argue that since the Court declared that the President "cannot initiate war" this means he cannot go to war.

Again, Mr. President, there is a total misreading of what the Court actually went on to hold. This bare statement is taken totally out of context, even though it was fully explained at a later point in the Court's decision to mean exactly the contrary of what war powers advocates are now claiming it meant. In upholding President Lincoln's right to meet the rebellion, the Court specifically said:

> If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does *not initiate* the war, but is bound to accept the challenge without waiting for any special legislative authority. (emphasis added) 67 U.S. 635, 668 (1863).

In my opinion, this case, far from indicating a superior role for Congress, means the Court has recognized a duty on the part of the President to answer threats against the Nation without waiting for Congress to baptize them as a declared war.

In fact, the language of the High Court in the "Prize Cases" is taken by most constitutional scholars being broad enough to constitute juristic justification of the many instances in our history in which the President has ordered belligerent measures abroad without a state of war having been declared by Congress. See, for example, B. Schwartz, "The Reins of Power," at 98 (1963).

The "Prize Cases" also make the point, which I have raised throughout this debate, that the President does not "initiate" war when he responds to foreign dangers. As John Quincy Adams remarked in 1836, during his eulogy on the life of James Madison, "peace must be the offspring of two concurring wills." Adams explained:

> War is a state in which nations are placed not alone by their own acts, but by the acts of other nations. The declaration of war is in its nature a legislative act, but the conduct of war is and must be executive. However startled we may be at the idea that the Executive Chief Magistrate has the power of involving the nation in war, even without consulting Congress, an experience of 50 years has proved that in numberless cases he has and must have exercised the power.

Mr. President, I do regret that I have to absent myself from the Chamber, but it is necessary. I do not think my being here is going to alter this decision one bit. I fully expect the bill to be vetoed, as I think it should be. I do not say this in a derogatory way. I still think it is a constitutional matter, not a legislative matter. I think it is very obvious that Members of this body really have not studied it, with the exception of a handful. It is a very interesting study. I have been at it myself for over 9 years, and as I have said on the floor time and time again, experts with whom I have discussed it, including every Secretary of State living, have convinced me that I am right, that the President does have the warmaking power under the Constitution, that the Congress right to

declare war means nothing except to declare; and if you look it up in the dictionary, it is a very weak word.

Congress purposely was denied the right to have the country to war by the Constitution because of the terrible experiences that Washington had under the Continental Congress, when we nearly lost that war because of the interferences by Congress in the day-to-day actions on the battlefield, including the replacement of commanding generals, and so forth; and when the Constitution was written, the Founding Fathers provided that the President, as Commander in Chief—not specifically, I will admit that—would have command of the forces as well as all responsibility for enforcing the laws of the land. It gave to the Congress the right—in fact, the power—to raise the armies and the navies, to provide regulations for them, to provide weapons, and so forth and so forth, and also allowed them to call up the militia, which, if you will study that part of the Constitution, meant just that—the militia—in other words, the national police or the National Guard type of activity. But nowhere does it give it power to go to war. We can declare war every 5 minutes, but not one man will leave the shores of America until the President says so.

I know this legislation is designed to change that to some extent, but again I do not believe it is the proper way to approach it.

In closing, I just wanted to again say I think it is very proper that this matter has come before the Congress. It is not the first time. Almost constantly during our 200 years as a Republic the matter has been under discussion—never as forceful as this discussion, nor has it ever reached the head that this has reached. I think it is wise that we have held these hearings and held the discussions on the floor, so that the American people might have a record of what we are talking about, and I would hope the American people——

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

Mr. EAGLETON. Mr. President, I yield 1 minute to the Senator from Arizona.

Mr. GOLDWATER. Including the academics in this country and all men in politics can read what has been going on the floor here, I think they will have a very complete history of what we are talking about and have a better understanding in regard to what we did and in making any corrections that they may want to make.

In closing, I thank the Senator from Missouri for yielding to me.

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

Mr. GOLDWATER. I yield.

Mr. MUSKIE. First, I wish to express my regret that the Senator will not be here later, especially for the reason he has stated. I want to thank the Senator for his contribution to this issue. I have studied his statement before the committee, and I have studied his statements on the floor. I know he has given a lot of time and study to the consideration of this issue. I think he has helped illuminate the issue in a very constructive way. I do not agree with many of the conclusions he has reached, but I wanted to take a moment to compliment him for his contribution.

Mr. JAVITS. Mr. President, if the Senator will yield me 2 minutes in opposition, I would like to insert in the RECORD immediately after the argument by the Senator from Arizona, so that historians or others who read the RECORD may follow the argument carefully, first, an excerpt from the powers of the President as commander in chief as explained by Alexander Hamilton in Federalist 69, which appears on page 11 of the committee report in these words:

> The President is to be commander in chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the Confederacy, while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature.[16]

And then an excerpt from a letter of Jefferson to Madison in 1789:

> We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.[17]

Finally, the Supreme Court of the United States, in the "Prize Cases" of 1862, said:

> By the Constitution, Congress alone has the power to declare a national or foreign war . . . The Constitution confers on the President the whole Executive power. . . . He is Commander-in-Chief of the Army and Navy of the United States. . . . He has no power to initiate or declare a war either against a foreign nation or a domestic state.[18]

Mr. EAGLETON. Mr. President, I am prepared to yield back the remainder of my time on amendment No. 364.

Mr. MUSKIE. Mr. President, I think the amendment has been sufficiently discussed. I am prepared to accept it. The Senator from New York has indicated he is willing to accept it. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri (No. 364) putting the question).

The amendment was agreed to.

Mr. EAGLETON. Mr. President, pursuant to the previous order, is my next amendment the pending business?

The PRESIDING OFFICER. The Senator is correct. The clerk will report amendment No. 365.

The legislative clerk proceeded to state the amendment.

Mr. EAGLETON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

> On page 4, line 22, strike out the words "Specific statutory authorization is required for" and insert in lieu thereof the following: "For purposes of this clause (4), 'introduction of the Armed Forces of the United States' includes".

Mr. EAGLETON. Mr. President, amendment 365 is intended to correct a drafting error in section 3.4. That section contains a provision which requires statutory authorization to assign members of the Armed Forces to command or coordinate, et cetera, foreign military forces. Immediately following this provision is another which sets forth the limitations on present treaties and current provisions of law. This provision reads as follows:

> No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause (4); and no provision of law in force at the time of enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

The language in this provision refers back to the language in the introductory sentence of clause (4), but does not pick up the separate provision which concerns the assignment of members of the Armed Forces to advise foreign military forces. The effect of the failure to pick up this language is that treaties and provisions of law in force on the date of enactment are subject to being construed as authorizing the assignment of members of the U.S. Armed Forces as advisers to foreign military forces who may be engaged, or there is an imminent threat that they may be engaged, in hostilities.

To correct this drafting error the words, "Specific statutory authorization is required for" at the beginning of the "advisor" provision, are striken by my amendment and the following phrase is inserted: "For purposes of this clause (4), 'introduction of the Armed Forces of the United States' includes"

This change ties the "advisor" provision to the language used in the subsequent provisions concerning treaties and current provisions of law, as well as to the introductory sentence in clause (4), thereby assuring that all references to the introduction of the Armed Forces of the United States will be tied in and encompass the assignment of U.S. advisers to foreign military forces.

Mr. President, this amendment does not change the original intent of the sponsors, it simply makes that intent clear in legislative language.

Mr. MUSKIE. Mr. President, this is another amendment which represents an improvement in drafting. I think it more clearly reflects the purpose of the section of the bill to which it relates. I am prepared to accept the amendment.

Mr. JAVITS. Mr. President, the purpose of the bill is to make the whole clause four applicable without question. In the drafting originally we believed that by repeating the words with which the clause opened—"pursuant to specific statutory authorization,"—we were do-

ing exactly that. I still believe that is the case. However, the Senator from Missouri (Mr. EAGLETON) suggests that is not necessary for clause four. He feels that we should make the words of clause four applicable to this particular situation which relates to participation in the ways described, to the military forces or the use of the military forces in another country.

I see no objection to it whatever. Draftsmen have a lot of choices of this kind. The Senator from Missouri has contributed so much that I defer to his judgment on this matter. The amendment is a drafting, "perfecting" amendment and it is acceptable.

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

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

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Missouri (putting the question).

The amendment was agreed to.

Mr. EAGLETON. Mr. President, I call up my amendment No. 366.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. EAGLETON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 9, line 15, after the period, add the following:

Any person employed by, under contract to, or under the direction of any department or agency of the United States Government who is either (a) actively engaged in hostilities in any foreign country; or (b) advising any regular or irregular military forces engaged in hostilities in any foreign country shall be deemed to be a member of the Armed Forces of the United States for the purposes of this Act.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. EAGLETON. Mr. President, I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I have cleared this request with the distinguished manager of the bill, the Senator from Maine (Mr. MUSKIE), the distinguished Senator from New York (Mr. JAVITS), the distinguished majority leader, and the distinguished author of the bill.

I ask unanimous consent that the vote on this amendment occur at 12 noon today and that the vote which was previously scheduled on passage of the District of Columbia appropriations bill for 12 noon today now be scheduled for 12:15 p.m. In other words, they will be back to back and the vote on the District of Columbia appropriations bill will immediately follow the vote on the Eagleton amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President, if the Senator will yield, I do not want in any way to rush the Senator. However, I wonder if the Senator from Missouri could perhaps tell us whether this is the final amendment that he will be calling up.

Mr. EAGLETON. Mr. President, I have one other amendment contemplated. However, this is the last amendment that I have that is of any great substance.

Mr. JAVITS. Mr. President, I thank the Senator.

Mr. EAGLETON. Mr. President, the bill before the Senate, S. 440, is entitled "The War Powers Act." But according to its preamble, S. 440 does not cover all of the warmaking alternative available to the President. It is intended only to "make rules governing the use of the Armed Forces of the United States."

The purpose of the amendment I propose today is to assure that the war powers legislation passed by the Senate is as all-inclusive as its title implies. My amendment would circumscribe the President's use of American civilian combatants in the same manner uniformed Armed Forces are circumscribed by S. 440 as presently drafted. It would, in other words, prevent a President from engaging American civilians, either directly or as advisers, in a hostile situation without the express consent of Congress. It would also restrict the practice of employing regular or irregular foreign forces to engage in "proxy" wars to achieve policy objectives never specifically approved by Congress.

If adopted, my amendment would make S. 440 a comprehensive legislative mechanism capable of dealing with each of the options available to the President to involve our Nation in hostilities.

I would like to emphasize at the outset that I bear full responsibility for the deficiency in S. 440 that I have just described. My own war powers bill (S.J. Res. 59) was also deficient in this respect and the compromise bill introduced by Senators JAVITS, STENNIS, and me, was passed last year with my full support, and it likewise contained no reference to paramilitary forces. I am, therefore, moving belatedly but with good cause, to correct what I believe to be a major loophole in S. 440.

A few weeks ago Director-designate of the Central Intelligence Agency William E. Colby testified before the Senate Armed Services Committee with respect to his pending nomination as Director of the CIA. One sentence used by Mr. Colby in his testimony influenced me more than any other to take the action I am taking today to amend S. 440. In explaining the CIA operation in Laos, Mr. Colby said:

It was important that the U.S. not be officially involved in the war.

Mr. President, I think that bears repeating. Mr. Colby pointed out to the Armed Services Committee that in his judgment it was important that the United States not be officially involved in the Laos war.

It was all right to be in the war, but we should not be officially involved in the war, and no one should know much about it.

But, of course, the United States was heavily involved in the war in Laos. We must therefore, ask, why was it so important that the United States not be officially involved? Was it because we did not want the enemy to know? Or was it because Presidents Kennedy, Johnson, and Nixon did not want Congress and the American people to know?

We know much more today about our military involvement in Laos, thanks in large part to the excellent work of my distinguished senior colleague from Missouri, Senator SYMINGTON, and we learn more each day. Recent testimony before the Armed Services Committee revealed that we were bombing in Cambodia and Laos long before such bombing was acknowledged by the White House. And how much more remains to be revealed of our tragic involvement in Indochina?

I am deeply concerned that Mr. Colby's statement would have even more appeal to Presidents were the Senate to pass this legislation without the pending amendment. I fear that Presidents, desiring to pursue what they would rationalize to be limited policy objectives, would be encouraged to avoid the procedures established in S. 440 in favor of covert operations—operations which would assure that "the United States not be officially involved."

The concept of this amendment is really very simple—it is an attempt to make the language of legislation match the realities of war. To anyone engaged in a combat operation, it is irrelevant whether they are members of the Armed Forces, military advisers, civilian advisers, or hired mercenaries. The consequences are the same—they can kill, and they can be killed.

American involvement in hostilities cannot be obscured by semantics. If we become involved in combat to pursue a policy objective other than the emergency defense of the United States, its forces or its citizens, then Congress should authorize that involvement. Either we are involved in hostilities or we are not involved. And that should be the operating principle of the War Powers Act.

Our concern over the error of our involvement in Indochina has led us to carefully examine the origins of that experience. And it has not been easy to find the beginning of that episode of American history.

There was no Pearl Harbor to signal the beginning of the Vietnam war. There was no major attack such as the attack on Fort Sumter. There was no sinking of the *Maine*. There was only a gradually escalating involvement—an involvement which grew out of a political commitment and a mostly covert effort to fulfill that commitment.

We should have learned by now that wars do not always begin with the dispatch of troops. They begin with more subtle investments . . . of dollars and advisors and civilian personnel.

In the case of Laos, our involvement began with a large group of CIA advisors who organized indigenous Laotion forces to engage in hostilities in pursuit of policy objectives established by the executive branch of the U.S. Government.

Although the exact date remains clas-

sified, the CIA began to organize and advise Meo tribesmen in Laos sometime prior to 1961. This advisory role continued after the 1962 accords which ostensibly reaffirmed the neutrality of Laos and divided political control of that country among the warring factions. In testimony before the Symington Subcommittee on U.S. Security Agreements and Commitments Abroad, former Ambassador to Laos William Sullivan argued that our clandestine involvement in the Laotion hostilities was "to attempt to preserve the substance of the 1962 agreements."

It is not my intention today to question the merits of the policy Ambassador Sullivan was attemptnig to justify by his statement. I am simply advocating that the President present his justification to Congress, and that he request specific statutory authorization before he pursues a policy objective by means of force.

The Indochina experience has shown us the frightening potential of covert American forces. It is now known that an elaborate program of covert military operations, under the code name Operation Plan 34A, was initiated by President Johnson in February, 1964, and that that program may have led to what was called a provocation strategy, or a plan to provoke the enemy into providing a pretext for bombing North Vietnam.

Operation Plan 34A was implemented in Laos as well as Vietnam. But in Laos there was a slightly different ingredient—civilian pilots under contract to the CIA-associated Air America participated with the Royal Laotion Air Force in an extensive air operation against the Pathet Lao.

U.S. Air Force planes also began operations over Laos in 1964, but they were arriving on the scene more than 3 years after the CIA had first introduced the United States into that hostile situation.

Mr. President, there is an old saying out in my part of the country that from little acorns big oaks grow. The same thing is true with respect to war: from little involvements—little CIA wars—big wars grow. That is why it is important to consider carefully every aspect of a measure labeled a "War Powers Act."

What we are trying to do is refurbish the process by which America goes to war—trying to restructure it, so that it is no longer the decision of one man who happens to occupy 1600 Pennsylvania Avenue. And so that when Americans, whether wearing a uniform or not, are sent into hostile situations around the world, Congress will have a part in the decision. The purpose is to see that the U.S. Congress, under its constitutional mandate, will share and participate in that decisionmaking process—the process to determine how, where, and when we go to war. That, in essence, Mr. President, is what S. 440 is all about.

To leave out of that measure the clandestine operations that a President may wish to carry out by using CIA or civilian personnel is to leave an enormous loophole that, in my judgment, if this bill becomes law, will lead to heartaches in years to come; because I think that Presidential warmaking in the future will be conducted just through this loophole. I am not sure whether it will happen next month or next year, in Berlin or in the Philippines.

Ambassador Sullivan is now about to go to the Philippines as our new Ambassador there. After his warmaking experience in Laos, he may have an opportunity in yet another country torn by internal strife to practice his talents. And if S. 440 becomes the law without including the civilian as the combatant, how many hundreds of people, on the CIA payroll, bearing arms, engaging in combat or advising in combat situations, may ultimately go to the Philippines?

I hope none. I hope we never send another American as a military adviser into a civil war anywhere in the world. But I am not confident that I can say that here today. I am not confident that even the bitter experience that we have had in Vietnam, Cambodia, and Laos was such as to prevent us from the future exercise of folly.

The pitch may be made to whoever is then the President of the United States, "Well, we cannot permit this country to 'fall'; we cannot permit good old Lon Nol to fall." We have to get rid of his brother; we send him on a world cruise, and we are about to send Lon Nol himself on a sabbatical to the United States. I do not know how many people have to be removed from Cambodia to prevent that government from falling. That is a curious way, I might say parenthetically, to prevent a government from falling, by ousting the government. But that is diplomacy American style.

I am not so sure we have permanently learned our lesson in Southeast Asia, and unless we plug this loophole and unless we treat all Americans in military situations alike, whether they are wearing a green uniform, red-white-and-blue, or a seersucker suit with arms—what payroll you are on is really secondary; whether you get it from the Pentagon or whether you become a member of the Armed Forces, the end result is the same: Americans are exposed to the risk of war. And as they are exposed to the risk of war, the country, then makes a commitment to war.

Remember well the word "commitment." A few Americans are captured and made prisoners of war in country x in the world, whether called Sergeant Jones or CIA Agent Jones. Then it becomes "a commitment" and the whole bloody business starts again and again.

Mr. President, I do not wish to dwell on the Indochina experience, but we cannot ignore its lessons. We cannot ignore the obvious implications of the covert activity in Indochina prior to the Gulf of Tonkin Resolution. We cannot ignore the possibility that Congress may have been deliberately hoodwinked into authorizing the Vietnam war by a "provocation strategy" implemented in large part by civilian combatants and advisers.

The potential for use of covert civilian forces by a President to achieve military objectives is presently restricted only by the imagination of man. We have already seen CIA personnel used as pilots and combat adviser. And if we fail to pass this amendment, we may see an even more wide-ranging use of civilian combatants in lieu of uniformed personnel whose activities will be circumscribed by this bill, if it is enacted in its present form.

In drafting this amendment I have taken care to avoid restricting the intelligence-gathering mission of the CIA a necessary and proper function. In most cases U.S. Government personnel may be required on occasion to accompany foreign military forces to observe their activities and report on them. My amendment would not prohibit such activity. It would only prohibit civilian personnel from active involvement in hostilities or from performing an advisory function with forces engaged in combat.

Mr. President, the principle I am advocating today was expressed most eloquently by Senator SYMINGTON when, commenting on the secret war in Laos, he said:

> Under our form of government, no matter what the nature of the enemy, without public support no Administration should wage a foreign war. To deny there is fighting is a travesty, for not only the enemy but also the American participants, including those who are casualties . . . know the truth.

Mr. President, the truth about our involvement in Indochina has only recently been revealed to the American people. And one aspect of that truth now acknowledged is that mary of the Americans involved in Indochina were civilians participating in covert paramilitary operations

It is time for Congress to acknowledge the vast potential available to the President to expand his warmaking options beyond the scope we have thus far envisioned for S. 440 if he decides to use civilian combatants rather than military combatants. It is time to acknowledge that Presidents will be encouraged to use these options if we fail to circumscribe them.

That is why I urge my colleagues to give the war powers bill before us today the comprehensive character that will make it worthy of its title by adoption of the amendment which I have introduced.

Mr. JAVITS. Mr. President, will the Senator from Maine yield?

Mr. MUSKIE. I yield.

Mr. JAVITS. I suggest to the manager of the bill that it might be well to sound the quorum bell. This is, really, probably the most important amendment to the pending bill that will be debated today, so that perhaps we can agree to having the time not charged to either side for the quorum call, in order to let Senators know what is actually going on.

Mr. MUSKIE. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum with the time not to be charged to either side.

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

Mr. MUSKIE. 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. MUSKIE. 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. MUSKIE. I yield myself 5 minutes.

Mr. President, I oppose, with some reluctance, the amendment of the distinguished Senator from Missouri (Mr. EAGLETON) to broaden the definition of "Armed Forces" beyond the original intent of the war powers bill.

Senator EAGLETON's amendment would bring under the provisions of this act—

> Any person employed by, under contract to, or under the direction of any department or agency of the United States Government who is either (a) actively engaged in hostilities in any foreign country; or (b) advising any regular or irregular military forces engaged in hostilities in any foreign country.

The purpose of this amendment—a purpose which under other circumstances I would strongly support—is to give the Congress greater control over the paramilitary activities of the Central Intelligence Agency. The secret war in Laos has been an instructive example for us all. The fundamental and original mission of the Central Intelligence Agency was to provide our Government with adequate intelligence to protect our Nation's security.

This purpose has now been expanded to include a range of dubious covert activities up to and including the secret war in Laos.

I believe it is urgent for Congress to review very carefully the role of the Central Intellgence Agency and to scrutinize the adequacy of existing legislation concerning the CIA. I am pleased, therefore, that Senator STENNIS has indicated that the Armed Services Committee, which has jurisdiction over the Central Intelligence Agency, will conduct a thorough review of these matters. Questions as to the proper role and function of the CIA and where the line should be drawn between legitimate and illegitimate activities are extremely important and delicate—and they should be examined as thoroughly as possible. I think we need new legislation to define more strictly CIA functions and to insure a sufficient congressional role in overseeing and controlling CIA activities.

Such a review should take place in accordance with the normal legislative procedures of the Senate. I do not believe it is appropriate to raise this matter on the floor in connection with this particular bill. The war powers bill has been in the making for several years. All its provisions have been thoroughly considered and debated in public hearings, in committee, and on the floor of the Senate. Broad Senate support for this bill—across party and ideological lines—has been built upon a delicate balance of interests and concerns. I do not think it is wise at this late date to consider a major new provision to this bill which now comes almost as an afterthought to several years of intense deliberation.

The distinguished Senator from Missouri has made an invaluable contribution to the writing of the war powers bill from the beginning. As a principal author of this bill, his views deserve particular consideration and respect. I am in accord with his broader purpose in proposing this amendment, but I disagree simply with his tactics in offering it to this bill.

As for the amendment to the bill, I should like to see the bill supported by the Senate today so strongly as to give pause to the President if he considers a veto. So I should like to see maximum support mobilized behind it for that reason, and preserve the bill as it is, rather than to jeopardize it with a major change at this time.

I yield to the distinguished Senator from New York (Mr. JAVITS) such time as he may need.

Mr. JAVITS. Mr. President, like the distinguished manager of the bill (Mr. MUSKIE), I have given most respectful thought and attention to the amendment which the Senator from Missouri (Mr. EAGLETON), one of the principal sponsors and architects of the bill, has proposed.

I must oppose the amendment for the reasons stated by the Senator from Maine (Mr. MUSKIE), which I endorse, and also for certain other reasons which are inherent in the problems raised by the amendment.

I wish to recall to the Senate that this bill has been properly put before the Senate previously and again now, not as changing this body's constitutional authority, not, indeed, as changing substantive law, but as a methodology in an area where no methodology has existed before, and where, as has been argued, the rough interplay of political forces is supposed to bring about some kind of rough resolution of what was unforeseen in the Constitution. I believe the best hope for this legislation resides in keeping it as a methodological bill.

The methodology of the bill is of profound importance to our Nation; procedure—or "due process"—is the bedrock of freedom and democracy. At the same time our methodology is "neutral" on the substantive issues which are to be considered and decided in terms of the "due process" we are establishing by this legislation. In effect, we are herein establishing that our Nation can be taken into war only through "due process." This is a major reform, in light of the experience of the last decade. It is a major new protection for our citizens, just as the protection of "due process" is for them with respect to criminal law, et cetera. Some of our colleagues wish to write in substantive policy proscriptions on sensitive issues—usually the still raw issues of the past decade. As much as I may, and do agree and sympathize on the substantive questions, they are not appropriate in a bill which is establishing methodology, or due process with regard to going to war.

Regretfully, because I happen to agree with the Senator from Missouri and the Senator from Maine, these arguments, factual policies, and declarations, involving what are called the continuum, in short, which little incidents lead to war, find no place in the bill, because this is a substantive question. It is not a matter of establishing a method by which both Congress and the President may exercise their constitutional authority. Rather, the amendment goes to the causes of war and what brings them about, in an effort to abate those influences or to abort, in its infancy, a situation which may lead to war.

That is the essence of my position. There are other points which are practical in nature; but essentially I think the gift which we all brought to the bill was to keep it methodological. The fact is that if the Constitution had anticipated the situation as it has now developed, Presidents would not have done what they have done, in my judgment, for almost 200 years. Congress would not have permitted its war power to be eroded and we would not have the situation that arose in the Vietnam war. With respect to the Gulf of Tonkin, in which Congress had joined, there was a dispute over the resolution whereby the President was given a general power of attorney, as it were, when the Congress thought it was giving a limited, specific power of attorney with respect to a particular incident alone.

One big fallacy creeps into the arguments of so many opponents, including the Senator from Arizona (Mr. GOLDWATER). They have an idea that the only way Congress can "declare war" is by passing a "declaration of war" resolution in both Houses of Congress some dark and tragic afternoon which says, "We hereby declare war on Hitler's government." Not at all. There is no such provision in the Constitution that so limits or specifies the power to declare war. We can exercise it any number of ways, so long as we do so by law.

These are reasons why it was necessary to define by methodology how we should exercise our power and the President should exercise his power. This has emerged as an unsettled question in the twilight zone of the Constitution, which we no longer wish to leave to the interplay of political forces.

However desirable the Eagleton amendment may be on substantive, policy grounds, it is out of place in this bill. The Armed Services Committee—and here the Senator from Mississippi (Mr. STENNIS) is on impregnable ground because the Committee on Armed Forces does have jurisdiction—should take it up as substantive legislation. If this amendment should become part of the war powers bill because the Senate thought it desirable to go with the Eagleton amendment, it would complicate the question of conference, as to putting together a conference committee on the part of the Senate which would be truly representative of those with the greatest expertise and the appropriate committee of authority in the CIA field.

The Senator from Missouri (Mr. EAGLETON) has already won a considerable victory in that the Senator from Mississippi (Mr. STENNIS) said in his letter that he is sympathetic to the thrust of the Eagleton amendment; that he is considering and the Committee on Armed Services will work up some way to deal with CIA, based on the revelations we have had. The Eagleton amendment undoubtedly will have very high priority consideration, as it should.

Mr. President, as to the text of the

Eagleton amendment, now we become lawyers and take a look at it. Here again, there are problems.

I would like to point out the defined parameters of the Eagleton amendment:

Any person employed by, under contract to, or under the direction of any department or agency of the United States Government.

That could include almost anyone; it is not confined to the CIA. Indeed, it is difficult to say what the limits of its coverage may be. Later on, I will explore whether it would cover foreign nationals, and particularly foreign nationals who may be covert intelligence agents of the United States. For instance, would Colonel Penkovsky, who was a member of the Soviet military and who provided so much key intelligence to the CIA right out of the Kremlin, the Soviet General Staff, would he have been covered?

Lots of things lead to war. A man on horseback may lead to war; national hatred could lead to war; anything could lead to war. We cannot deal with all those subjects in this bill.

Another important consideration is that there outside the Armed Forces; was are covered by the bill, is no agency of the United States which has any appreciable armed forces power, not even the CIA. They might have some clandestine agents with rifles and pistols engaging in dirty tricks, but there is no capability of appreciable military action that would amount to war. Even in the Laotian war, the regular U.S. Armed Forces had to be called in to give air support. The minute combat air support is required you have the Armed Forces, and the bill becomes operative. A key control which would not be reached by this amendment even if it could, would be control of the use of money. The fact is that vast sums of money were given to Vang Pao in Laos to pay for mercenary Meo army. The use of Air America, which was a logistical operation, and not a combat operation, presumably would not be reached by the amendment alone it was a key factor in CIA involvement in the secret war in Laos.

Finally, one point of draftsmanship.

It will be noted the amendment starts out with the language, "Any person employed by." That includes a foreign person, as well. There are many clandestine agents who are foreign and employed by, in the sense of being financed, maintained by, and directed by Department of the U.S. Government, which is one of the facts of life. Are they covered by this bill? If they are clandestine agents who are members of foreign armies does this amendment apply? Suppose a member of the Soviet or Chinese, or Vietcong armies is a CIA "controlled American source," does this amendment apply if his unit goes into hostilities?

Substantive law can determine what activities can be engaged in with respect to foreigners in terms of pay, and so forth. Law can determine that, but it is hardly a methodology. You would be dealing there with substantive approaches to the law. Shall the United States employ foreign citizens for these purposes? If it does, in what manner, and how are they controlled, and so forth? Again, this is beyond the ambit of this bill.

The matter was so eloquently and precisely put by the Senator from Maine (Mr. MUSKIE) in what he said in respect of the amendment. It simply does not fit within this context, and considering the historic nature and importance of the context we should not burden it with substantive questions which in addition to all other points made are within the jurisdiction of another legislative standing committee, to wit, the Committee on Armed Services; and where we are not faced with any question of avoiding the issue, but have the word of a man whose word rings as true around here as that of any Senator of the United States, and that is that he proposes to deal with the question.

One other point which is interesting: I, too, have talked with the Senator from Mississippi (Mr. STENNIS) at length. He was very reluctant to make this expression on this particular amendment, because he felt that he wanted no feeling here in the Senate that he was trying to have his voice carry Senators when he was far away from us. He, too, like everybody else, wanted to be subject to debate and cross-examination. But I think the Senator from Maine (Mr. MUSKIE), and I prevailed on him to feel that as he had used his privilege very sparingly and he had this bill so close to his heart, this was a measure in which that was deserved, and I am glad to say he acted accordingly.

Mr. MUSKIE. Mr. President, I yield myself 2 minutes.

Reference has been made to communication with the Senator from Mississippi (Mr. STENNIS), and as the Senator from New York (Mr. JAVITS) has explained, the Senator from Mississippi was very reluctant to appear to be trying to influence votes here when he could not participate personally. But we prevailed upon him, and I take the opportunity to read that letter into the RECORD:

JULY 19, 1973.

HON. EDMUND S. MUSKIE,
U.S. Senate,
Washington, D.C.

DEAR ED: If I could be on the Floor, I would support you fully as you push for the passage of the War Powers Bill, as reported by the Foreign Relations Committee, without further amendments of any substance.

One amendment of substance is by the Senator from Missouri, Mr. Eagleton, who has done much work and has made a fine contribution to this important bill as it now stands. This amendment has a prohibition of using the C.I.A., or its funds, in war activities of the type we have used in Laos. The experience of the C.I.A. in Laos, as well as more recent disclosures of matters here at home have caused me to definitely conclude that the entire C.I.A. Act should be fully reviewed.

Accordingly, I already have in mind plans for such a review of the C.I.A. Act by the Senate Armed Services Committee and have already started some staff work thereon. All proposed changes, additions or deletions can be fully developed and hearings held thereon at that time. I have already completed, but have not yet introduced some amendments of my own. The proposal by the Senator from Missouri, Mr. Eagleton, to explicitly prohibit any action by the C.I.A. of the type we have had in Laos, or any other activity of that kind could and would be fully considered by the Committee at that time. I could support some major points in that particular amendment as a part of a bill on the subject, but fully oppose the amendment presented as a part of the War Powers Bill.

The bill now before the Senate, as finally written and improved by the Foreign Relations Committee, is an excellent bill and is confined to the Constitutional subject of actually committing the nation to war.

I believe this bill, if confined to its proper subject matter will pass the Senate by a large vote and will emerge from the Conference Committee as a bill with meaning. There are reports, which I hope are erroneous, that a veto is in prospect if this bill passes. If so, I feel so strongly that a meaningful bill relating to the War Powers, and the responsibilities of the President and the Congress, should be passed, and I would strongly urge that that bill pass, the veto notwithstanding. If we clutter the War Powers Bill with other matters we would probably kill what is otherwise a good chance to override a possible veto.

Again, I certainly wish you well, and hope the Committee bill in its present form can be preserved and passed and passed by a large vote.

Most sincere yours,

JOHN C. STENNIS,
U.S. Senator.

I think those who read this letter would agree that this is an extraordinarly strong commitment from the Senator from Mississippi. To have anticipated a veto, and to have indicated with such vigor his intention to press for an override, I think is the kind of action the Senator from Mississippi would rarely take. It is because of his voice, and that of the Senator from New York, and my own understanding of the forces that went into putting this bill together, that I reluctantly oppose the amendment of the distinguished Senator from Missouri.

Mr. EAGLETON. Mr. President, I yield myself such time as I may consume.

I sat here and listened with deep interest to the comments of both the Senator from Maine (Mr. MUSKIE) and the Senator from New York (Mr. JAVITS). They are both men of extraordinary capability and good will, and I suspect that deep down in the inner recesses of their hearts they know I am right. I think they would like to vote for the Eagleton amendment. In fact, I think they believe in it, because what triggered the situation that we find ourselves in today—what triggered the war powers bill pending before this body today—was not the fact that all of us went, during the recess, to academia and hibernated with professors. We did not just sit there and read lots of constitutional lawbooks, statutes, and what have you. It was not because a lot of thought had to be given to the methodology, to use the word used by the Senator from New York. But it was due to the fact that for a decade we had been in an atrocious nightmare in Southeast Asia.

This bill was not conceived in the abstract. It was not conceived in the ethereal. It was conceived in blood—50,000 dead and the whole litany of what occurred in Southeast Asia. That is why we are debating this bill today—not because it is a prosaic idea, but because of our recent tragic experience.

That experience has many facets—not only the Gulf of Tonkin in 1964, and not

only Cambodia, but one of the integral facets of our being involved in that operation in Southeast Asia was the fact that we became clandestinely involved in that sector when we should not have been there in the first place. Then, having already become overly involved in a secret, covert way, the war mushroomed and we found we could not extricate ourselves from that nightmarish situation. Eventually 650,000 of our troops were involved and more than 50,000 of them died.

So military activities will be carried on by civilian employees of the Pentagon, because under the war powers bill nothing prevents the Pentagon from hiring or contracting with civilian employees, ex-military people perhaps, but people that are called civilians.

They keep them in their seersuckers and keep them all over the world, just as they did with the Royal Laotian aircraft for bombing in Laos.

The Senator from New York has said that if they come into it with our combat troops, then S. 440 takes hold. But in Laos it was 3 years of CIA war before combat personnel came in. We were already committed. They had their own combat personnel there. They had their own civilians flying aircraft for 3 years before the U.S. Air Force became involved in it. That would have all occurred before S. 440 would take hold. By then we are deeply committed.

My capabilities with definitions are meager indeed, but "commitments" have come to haunt us. After Americans are on the ground, advising, directing, and masterminding, and running the whole military operation, just because they do not have on their "U.S. Army" uniforms.

Let us suppose they just use the words "U.S." Strike the word "Army." Strip that from the regalia. So they wear some fatigues and are paid by the CIA, or indeed the Agriculture Department, as the Senator has said my amendment would cover such a possibility. Any department of the Government could be the sponsor of covert activity.

Let me move on. The Senator from New York talks about a methodology to control war. What we are really talking about in this bill is hostilities. That is the key word in S. 440. How do we get in them? How do we avoid them? Who participates, and under what circumstances? That is what the bill is all about.

This amendment is designed to prevent all American combatants from getting involved in hostilities in a foreign country without the consent of Congress.

I said in my earlier remarks that I do not know what the troublesome areas of the world will be in the future. But we still have some left. The situation in Southeast Asia is by no means resolved.

We will have our new Ambassador going one of these days to Manila, a country where they have some problems of insurrection and civil strife.

With his expertise, perhaps Ambassador Sullivan will get us involved in the Philippines, if he has a mind to. He has experience in that area.

If we pass this bill and leave this gaping loophole of uncontrolled, unilateral Presidential discretion so that civilians can fly, bomb, shoot, and what have you, I think that we are asking for trouble. We are asking for a repeat of exactly what we had sought to avoid by this legislation.

In conclusion, Mr. President, I would like to read briefly from a piece published in the May 1973 Harper's magazine by Fred Branfman, the author of the book "Voices From the Plain of Jars." He is an acknowledged expert on Indochina and has considerable expertise in that part of the world.

I will read two passages if I may. The first one reads:

> There has been an almost audible sigh of public relief since the signing of "The Agreement on Ending the War and Restoring the Peace in Vietnam." True, everyone knows full disengagement will be a slow and complicated business, stretching through months and months. But the important thing seems to be that the United States has agreed to (1) a set of principles sweeping away the familiar justification for U.S. war in Indochina; (2) a set of promises built around the stipulation that the U.S. "will not continue its military involvement or intervene in the internal affairs of South Vietnam." At the very least, we accept the idea that the Paris agreement marks progress; from there, we may be inclined to assume that Vietnam will begin receding into a limbo where American involvement is nonexistent.
>
> The evidence paints a contradictory picture. It shows, instead, that we are "progressing back" to the kind of covert warfare practiced in Vietnam during the late Fifties and early Sixties, and in Laos almost continuously since 1962. In the months since the Paris agreement was signed, there has been a steadily growing record of press reports, public statements by Administration officials, and budget allocations that, taken together, point to resumption of a covert war, leaving us poised only half a step away from a renewed major military commitment in Indochina. No piece of evidence is conclusive in itself, but the overall pattern is distinct. Here's the way I see the logic of the situation, based on newspaper reports, Congressional testimony, official documents, and my own four years' experience watching the "secret war" in Laos.

Mr. Branfman goes on to say:

> PERSONNEL FOR A COVERT WAR
>
> Since April 1, 1973 when U.S. forces were formally withdrawn, American personnel in Vietnam have done essentially what the soldiers did before them. They are under contract to the Department of Defense, the State Department, or the Central Intelligence Agency, performing chiefly military and paramilitary tasks.
>
> Many advisers to the South Vietnamese Air Force and Army are technically civilians, it is true. But almost all have been members of the U.S. Armed Forces, and many were recruited directly from the U.S. Air Force or Army.
>
> There have also been indications that some active-duty U.S. military personnel remain in South Vietnam disguised as civilians. A November 29 *Los Angeles Times* dispatch from Saigon, for example, noted:
>
> While many of the new experts or technicians (or advisers) will be wearing civilian sportshirts, the suspicion is strong that underneath they will have dogtags, or at least retirement papers . . . One staff officer, already sporting civilian clothes much of the time, admits that the biggest change in his office will be the removal of some awards and military knickknacks, including a mounted AK-47 rifle, which would not fit his "new" identity.
>
> It is also quite possible that active-duty military personnel will be sent into South Vietnam on "temporary duty" from Thailand. One indication of this is the announcement that the U.S. military command will move from Saigon to the remote Air Force base at Nakhorn Phanom (NKP) in northeast Thailand. NKP is smaller and has fewer facilities than other U.S. bases in Thailand, such as Udorn or U-Tapao. It has, however, served as a center for U.S. covert activities for years. NKP functioned as a base for the abortive electronic battlefield, for the "Blue Berets" of the Air Force Special Forces, and for the 56th Special Operations Wing, a propplane unit used for agent insertion, pilot rescue, and specialized operations like the Son Tay prison raid. Were the U.S. role from Thailand to be limited to logistics support for South Vietnam, it is unlikely that NKP would have been chosen as the new U.S. command post.
>
> Clearly the U.S. withdrawal has been such that it does not compromise the capacity to direct and participate in covert war operations.

Mr. President, I do not vouch for every statement made in the Harper's article as to the inaccuracy. Much of it is speculation.

My prognostication and crystal ball gazing does not tell me that all things will not be all right in the Philippines. However, when we are preparing a piece of legislation that determines under what circumstances we go to war—the most terrible decision that a free country or any country should make—we should at the time we vote on that piece of legislation know what it contains. And it should not contain an imperfection, a loophole, that if exploited, would be literally a mile wide.

It is not good enough to say that we should not rock the boat. Lots of Senators have agreed on this draft of the bill. There is nothing sacred about any piece of legislation that comes to this floor. It is not Holy Scripture. It is not written by divine ordinance. Legislation is drafted by man with all of his imperfections. And sometimes wisdom is a bit belated.

This loophole so far as the CIA is concerned came about because we are still learning more about the war in Laos. I have not learned enough. Mr. Colby's testimony before the Armed Services Committee the other day brought this matter to my attention in terms I simply could not ignore.

However belated the legislative process may be, when an amendment is offered it ought to be considered for what it is, and especially if it is to plug up what I consider to be a significant loophole.

We will have a war powers bill, and it will pass by a substantial vote. It may or may not be signed by the President.

We are not here to write labels on a document. What does the bill cover, or what does it leave uncovered? As of now, what this bill leaves uncovered, is the very means, the very methodology, the very mechanism by which we first entwined ourselves in Southeast Asia. This is the kind of loophole that under no circumstances should be permitted to remain in a bill such as this.

Our memories are sharp enough at this point in time, in 1973, to remember the antecedent origin of our beginnings in Southeast Asia. I think we should act now to assure that such a tragedy cannot recur.

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

Mr. EAGLETON. I yield.

Mr. FULBRIGHT. Mr. President, I support the amendment of the Senator from Missouri. It seems to me that this is a very essential part of this overall legislation, simply because of our recent experience in Laos.

The Members of the Senate will recall that the CIA undertook to create and did create its own advisors and directors and army that I think at one point reached about 36,000 men, in the neighborhood of 30,000 to 36,000 men. That fact was carefully kept from the Congress and from the public. There is an informal committee of the Senate that is supposed to have informal supervision of the CIA. No attempt has been made to create a formal committee or a joint committee of the Congress.

Former Senator McCarthy of Minnesota and others tried that, as did the majority leader, but we were defeated in those efforts by the powers of the Military Establishment, and it was rejected.

The CIA Committee, the so-called committee that exists, has not met, I believe, in 2 years. I have, as all of us do, the greatest respect and affection for the Senator from Mississippi (Mr. STENNIS), and no one questions his sincerity and his devotion to the defense of the United States, but the facts are that this CIA army was created and paid for without the knowledge of the Senate generally, or Congress generally. There may have been one or two members of the CIA Committee who knew about it. That has never been clear. As I recall, the late Senator from Louisiana, Mr. Ellender, was reluctant to discuss the matter as to how much he knew about the operation in Laos.

So the Senator from Missouri is entirely correct in using that as a recent example of what could be done, and what could also be repeated in the Philippines. That was the principal reason the question was raised about the suitability of Mr. Sullivan. The reason for the action on Mr. Godley has been grossly distorted. It had nothing to do with retribution or punishment, or anything else. It was the experience in Laos, the technique and the devotion which both of *these gentlemen* had developed for that operation, as evidenced by their actions and within the personal knowledge of members of the committee; and we simply thought it was not proper to put men into positions of policymaking, in particular, who might be inclined to feel that this was an appropriate and effective way to deal with situations such as have developed in the Philippines, which are not unlike those which developed in Vietnam.

I think this is a particularly pertinent issue that the Senator from Missouri raises, because otherwise any future President can end-run the law and use the CIA in this fashion. So I am sorry that there are those who are opposed to asserting the role of Congress in this kind of activity. It is a curious thing: every time an effort is made to assert the role of Congress in such matters, there are always reasons raised in connection with past practices as to why it should not be done.

I must say that the prospect of the bill being vetoed, as an argument that we should not strengthen it, does not appeal to me. I cannot imagine any President vetoing this bill and taking the risk of being judged after the fact as to whether he exercised proper judgment about it. I shall discuss that at a later date. But I think there is very little prospect that this bill as reported by the committee would be vetoed, because I cannot imagine why the President would veto it. If we put in something like the Eagleton amendment, to give it some teeth, it is true that it might be vetoed, but I think it might then be overriden, and it would be worth overriding the veto.

Of course, no President is going to like the slightest restriction upon his complete freedom of action to do anything in the military field or in the domestic field. They do not want any restriction even, as evidenced in the last election, on how they go about reelecting themselves. That goes even so far as ignoring the criminal laws already on the statute books. They would also ignore this bill, perhaps, but we have to legislate on the assumption that the President will abide by the law. That is the approach we take. But if the law has no restrictions upon his freedom of action, there is no reason for him to veto it

This bill has some good points in it, and I was extremely reluctant to vote "present" in the committee, because I could not endorse it, particularly section 3, which I shall discuss later. But I submit that the provision offered by the Senator from Missouri, in itself and on its own feet, is well worthwhile. If it is rejected here, as I anticipate from the attitude of the sponsors, who have now lined up a majority of the Senate—and there are only four Members present to hear the debate—I see no particular reason why those who are committed will not vote for it with no knowledge of the Eagleton amendment or any other amendment. So I assume the die is cast as far as the outcome in the Senate is concerned.

I was very much in favor, as indeed everyone is, of the announced objective of this legislation, which is to restrict the untrammeled power of the Executive to take this country into war. I am bound to say that I do not believe legislation can control these things absolutely. It is just the best we can do. If a President is inclined to deceive the Congress, as I believe the late President Johnson was in the Gulf of Tonkin matter, he can hornswoggle and hoodwink Congress, and cause us to take actions which serve his purposes, which we would not do if we knew the truth. That is the type of thing that no legislation can meet. We all supported a bill to limit the power of the President to take us into war on his own initiative, without consultation with Congress, but then there developed a question of opinion as to the need. The difference is not only as to objective—we all agree with the objective—but there are honest, legitimate differences of opinion as to the effectiveness of the means here provided.

Some of the provisions in the bill are good ones, and some, I think, can be improved. I would hope to help to improve them during the course of action here on the floor and in the conference.

But I congratulate the Senator from Missouri. He is certainly making an honest effort to give some substance to this legislation. One of the most glaring gaps in the power of Congress to control our own destiny is the enormous development of the power of the intelligence agencies, in this instance the CIA. Of course, it would apply not only to the CIA, but to the NSA or the DOD or any other agency of that sort. Under the general terms of the amendment of the Senator from Missouri, it would apply to any of those agencies that undertook to covertly engage us in another war on any massive scale such as is here involved. So I shall certainly support it.

I regret very much that the Senator from Mississippi, whom we all respect so much, has from his sick bed sent a letter to discourage this very mild but very significant move toward the reassertion of some congressional control in this area. I again only remind the Senate that on two or three occasions Senators—I know the Senator from Montana, the distinguished majority leader, on one occasion, or maybe both, has taken a very strong part, as Senator McCarthy did, and I did my best with several others. We even had an executive session of the Senate to discuss the matter, and a genuine effort was made to create a committee somewhat like the Joint Atomic Energy Committee to give supervision to the intelligence agencies; and I think, as I look back upon it, it was a great mistake that we did not do that.

We did not do it simply because the same officers and the same people who now oppose this objective were successful in mustering enough votes to kill it. But I think it clearly appears to have been a great mistake not to have done it, because, as to this question of supervision, there just is not any. As to the existing informal committee, I believe it is 2 years or approximately 2 years since it has met. That committee serves not to supervise or inform the Senate about its activities; it serves to protect the CIA from inquiring eyes, be they in the Senate or in the public. It has been effective in preventing anyone knowing what the CIA does, what it spends, and how it operates. We find these things out long after the fact, after they have happened. We found that out about Guatemala. We did not find out about Laos until it had been going on for 2 or 3 years. After awhile these things come out, only after the damage has been done after the commitments, the loss of life, the expenditure of money has taken effect. So if we are to have any power, any influence upon this type of activity, the amendment of the Senator from Missouri (Mr. EAGLETON) should be adopted. I congratulate him on offering it.

It is unpleasant to do anything that disturbs the status quo in the field of intelligence or military affairs. That has

been true for 20 years, and I suppose it will be true for another 20 years until Congress itself has enough courage and enough votes, I may say, in the final analysis, to undertake some responsibility in this area. So that I think what the Senator from Missouri has done is to render a great service, regardless of what the outcome will be.

Mr. EAGLETON. Mr. President, I most sincerely thank the distinguished Senator from Arkansas for his presentation and for his laudatory remarks. Naturally, it goes without saying that there is a great deal of wisdom and substance in his remarks.

Mr. President, I am prepared at this time to consider yielding back the remainder of my time.

Mr. MUSKIE. Mr. President, I should like to take a few minutes to respond, if I may, and I yield myself 5 minutes for that purpose.

The PRESIDING OFFICER (Mr. BIDEN). The Senator from Maine is recognized for 5 minutes.

Mr. MUSKIE. Mr. President, I have listened to the distinguished Senator from Missouri (Mr. EAGLETON) and the distinguished Senator from Arkansas (Mr. FULBRIGHT). I disagree with very little they have said. They have stated the basic policy issue which is addressed by the Eagleton amendment. The Senator from Missouri was kind enough to suggest that deep down in my heart I believe he is right. That is correct. He was kind enough to suggest that deep down in my heart I would like to vote for his amendment. I would, but at the right place, at the right time, and on the right piece of legislation.

I disagree with the distinguished Senator from Arkansas, the chairman of the Committee on Foreign Relations, in his comment that those of us who oppose the Eagleton amendment resist the establishment of an appropriate congressional role in controlling the CIA.

In my statement I indicated earlier this morning that my concern was at least as urgent as that of the Senator from Missouri. I agree with the Senator from Missouri that this legislation was conceived in blood. But our problem is how, and when, and by what means do we bring the loose ends together in the public policy field that led us to this tragedy?

The suggestion that we can, somehow, wrap them all up in one legislative package and enact it, without any doubts of a Presidential veto or our ability to override it, is simply unrealistic.

I have sat in this body for the past 9 years and watched Senators FULBRIGHT, MCGOVERN, HATFIELD, MANSFIELD, and so many other Senators trying to get a legislative handle on the problem so that Congress could end the war, only to see effort after effort end in frustration.

Mr. President, it is a matter of tactical judgment as to whether we can load this bill with that much more and still have it "fly." Of course, it is a matter of judgment. But that should not divert us into a debate over who is for what. It is a matter of tactical judgment.

The Senator from Arkansas suggested that it is inappropriate to consider what is legislatively achievable. That is a different kind of argument from the one I heard in the Committee on Foreign Relations a couple of weeks ago in connection with the Cambodian compromise. Everyone except the distinguished majority leader and myself voted for that one, because, they said, "This is what is achievable."

The Senator from Missouri did not vote for this compromise on the floor, and I did not vote for it on the floor, because we both thought more was achievable. That did not mean either side was purer than the other, but it did involve consideration of the tactical question of what is achievable.

I happen to think that the war powers bill in its present form is of sufficient importance to reestablish the balance between the President and Congress, so that if it becomes law we will have achieved something important. I should like to achieve that. I think that to overload it, whether by this or some other amendment, is to risk the possibility of not having that achievement.

That is my tactical judgment. It could be wrong. But that is my reason. I think it stands up. My footnote is Senator FULBRIGHT's own reasoning in connection with the Cambodian compromise—that is, to work for what was achievable, and I honor him for it. He may be right.

Mr. FULBRIGHT. Mr. President, will the Senator from Maine yield?

Mr. MUSKIE. I yield.

Mr. FULBRIGHT. In that case, we already had a veto. There was no speculation about it. We had a veto. There was little doubt in our minds that we would have another. You have not had the veto on this. I do not know whether you will or not. I cannot imagine why the President would veto this Senate bill if we passed it.

Mr. MUSKIE. May I say to the Senator from Arkansas that the distinguished Senator from Arizona (Mr. GOLDWATER), earlier this morning, expressed complete confidence that the President would veto it. The distinguished majority whip, the Senator from Michigan (Mr. GRIFFIN), told me off the floor yesterday that he expected a veto.

May I say further, in response to the Senator's point, that the veto in the case of the Cambodian matter had come close to the end of the fiscal year, and we were coming closer. It was my own "gut" feeling, after 9 years, that we had painted the President into a corner and that it was worth another test. It was worth another test to see whether we could get the 18 additional votes in the House which would be necessary to reverse the override decision on the first veto. That was my judgment. The Senator disagreed. But you certainly demonstrated with your position on this issue that the tactical question of what was achievable is a legitimate one.

Mr. FULBRIGHT. I do not deny that at all.

Mr. MUSKIE. But you denigrated it earlier, and I am trying to raise it to the proper level of serious legislative consideration.

Mr. FULBRIGHT. I would think the merit of the amendment of the Senator from Missouri, if it is put in, is sufficiently great to make this piece of legislation significant. It would give it a much greater chance of overriding a veto than a measure which has really no very serious effect on the President's power.

The PRESIDING OFFICER (Mr. BIDEN). The 5 minutes the Senator from Maine granted himself has expired.

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

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

Mr. FULBRIGHT. Mr. President, if the President is foolish enough to veto it, then I do not know why anyone should be too disturbed about overriding it. But if the bill has strength to it, as would be given to it by the amendment of the Senator from Missouri, I would certainly be in favor of overriding a veto.

Mr. MUSKIE. So the Senator acknowledges the importance of tactical judgment which he is now adding to his argument in favor of the Eagleton amendment.

Mr. FULBRIGHT. I never meant to deny the tactical. It is just, in this particular situation, that you are speaking of the generality. I admit to the tactical importance of this particular situation. This is not similar to what we had in the case of Cambodia in the way of a veto. We have not had one yet. If you have a veto and you think this is worthwhile to override the veto, we can meet the question as to whether we weaken or strengthen it, or leave out various parts of it. That has always been acceptable.

If I gave the Senator the impression that the tactical consideration of this question was not significant, then I withdraw it or I misspoke myself. I have for 30 years, engaged in measures which have had that as part of consideration. It is foolish to pass any legislation that we know is going nowhere unless it is an educational matter and we are trying to inform people and it is necessary that it be passed. That is done sometimes. But this is part of legislation. It has been passed. It is not that kind of legislation at all.

I did not mean to give that impression. I certainly do not mean to give the impression that the Senator from Maine is not as entitled to his judgment as I am. In debate, every now and then, it is the nature of debate that differences of opinion crop up. I do not pretend to know any more about it than the Senator from Maine. He is a very distinguished former candidate for the Presidency. That gives him an elevation and a prestige far beyond an ordinary Senator. So I would not mean to insinuate that he is not entitled to his views.

I withdraw or I modify any statement I made that reflected upon the sincerity and good faith of the Senator from Maine in taking the position he does. I was only trying, in a clumsy way, to make an argument in support of the Senator from Missouri's amendment.

Mr. MUSKIE. I think the Senator and I understand each other. I simply want the record to reflect that what separates

the Senator from Missouri and the Senator from Arkansas from the Senator from New York and myself is the tactical question of whether it is wise to load this much more on the bill.

Mr. JAVITS. On the veto question, I do not think we are left in any doubt about that. The minority leader of the House read to the House on Wednesday the President's declaration, in which the President said:

I am unalterably opposed to and must veto any bill containing the dangerous and unconstitutional restrictions found in section 4(b) and 4(c) of this bill.

Those are the key sections which relate to the 120 days—as contrasted with our 30 days—and the question of a sooner enactment by the House of a concurrent resolution shortening the time.

It seems to me that the argument made by the Senator from Maine, the manager of the bill, is entirely appropriate, in view of the fact that—and Senator STENNIS' views on this are critically important—we do want to muster the maximum support for a bill the thrust of which is methodology rather than the causes of war.

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

Mr. JAVITS. I yield.

Mr. FULBRIGHT. I was only saying that those comments were directed at the House bill, not at this bill, and at two provisions which are not in this bill and which are restrictive. So I do not see that that is relevant to the discussion of this particular bill.

Mr. JAVITS. At the very least, it indicates that the President is unalterably against some basic policy and principle which is contained in this bill, as it is in the House bill.

Mr. FULBRIGHT. I am bound to say that this President would be opposed to any bill with the slightest restriction on his complete freedom of action to do as he pleases.

Mr. JAVITS. Then, we agree. That does not denigrate from the fact that we say there is a real danger of a veto.

I say this as the author of this bill, with the great aid of Senator EAGLETON, Senator STENNIS, and other Senators in the fashioning which was done in the Committee on Foreign Relations. The purpose and intent I had was to arrive at a procedure on the major question of war, and I thought if we could accomplish that, we would have leashed what the Founding Fathers called the Dogs of War. I thought that was what I was doing.

The causes of war are many. If we are going to try to follow all those things, we will be chasing lots of rabbit tracks. I agree as to the CIA, but I think that if we try to crank it into this situation, the fundamental thrust of the bill, its fundamental impact, could be lost.

One thing on which I should like to take issue with my esteemed chairman, with whom I work so closely, is that this is a critically important bill without the CIA amendment. It is an historic break with the past. At long last, we will say how this must be done. All I say is that now, today, there is nothing the President has to look at which tells him what to do. He has freedom of action, unless we stop him, and we have to find a way to stop him that is agreeable to a majority of the Members of Congress or to two-thirds of the Members.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. EAGLETON. Mr. President, it is my understanding, pursuant to the previous order, that the vote on this amendment will occur at 12 noon sharp and that a vote will occur at 12:15 p.m. on the District of Columbia Appropriations bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. EAGLETON. I yield back the remainder of my time.

Mr. MUSKIE. I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time on the bill?

AMENDMENT NO. 361

Mr. FULBRIGHT. Mr. President, I call up my amendment No. 361.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 8, between lines 20 and 21, insert the following:

"TROOP LOCATION AND DEPLOYMENT

"SEC. 8. (a) The President shall provide, under appropriate injunctions of secrecy to be removed upon due notice from the President, to the Committees on Foreign Relations and Armed Services of the Senate, the Committees on Foreign affairs and Armed Services of the House of Representatives, and the Joint Committee on Atomic Energy the following:

"(1) not later than the fifth day of every month, a comprehensive listing of all Armed Forces of the United States by geographical location as of the last day of the preceding month with notations as to reasons for changes from the report for the immediately preceding month; and

"(2) immediate notification and explanation of the issuance of any order to deploy any major unit of the Armed Forces of the United States from within the United States or the surrounding waters to any other geographical location of the world from one geographical location of the world to another in any case in which—

"(A) the movement results in an increased presence of such Armed Forces in the region to which the unit is deployed for a period in excess of three days; or

"(B) such Armed Forces are in combat-ready status.

"(b) The Congress may restrict or prohibit by concurrent resolution, any deployment of such major unit referred to in subsection (a)(2) of this section. In such event, the President shall, within thirty days, terminate such deployment and transfer any part of such Armed Forces already so deployed to the place from which they were deployed or to the United States, its territories and possessions.

"(c) The provisions of this section shall not apply when an authorization of hostilities by Congress is in effect.

"(d) For purposes of this section, 'major unit of the Armed Forces of the United States' means—

"(1) at least a squadron of aircraft or its equivalent;

"(2) any two or more major combatant boats or vessels (other than ballistic missile submarines); or

"(3) at least a brigade of troops or its equivalent.".

On page 8, line 22, strike out "SEC. 8" and insert in lieu thereof "SEC. 9".

On page 9, line 4, strike out "SEC. 9" and insert in lieu thereof "SEC. 10".

Mr. FULBRIGHT. Mr. President, how much time do I have?

The PRESIDING OFFICER. One hour on the amendment—30 minutes to a side.

Mr. FULBRIGHT. I yield myself such time as I may require.

Mr. President, a most important problem, closely related to the war powers, is the question of authority to deploy the Armed Forces outside of the United States in the absence of hostilities or the imminent threat of hostilities. In the section of the committee report on S. 440 entitled "Explanation of the bill," it is stated that:

This legislation would not inhibit the President's capacity to deploy the Armed Forces, that is, to move elements of the fleet in international waters.

Prof. Raoul Berger commented in his testimony before the Foreign Relations Committee on war powers:

Unless Congress establishes control over deployment by statute requiring Congressional authorization, the President will in the future as in the past station the armed forces in hot spots that invite attack, for example, the destroyer *Maddox* in the Tonkin Gulf. Once such an attack occurs, retaliation becomes almost impossible to resist.

In other words, that Tonkin Gulf incident was a classic case of provocation on our part of an attack which established what they alleged to be a cause for going to war—at least, a cause in that case to request the resolution from Congress.

I am reminded in this connection of a memorandum written in 1968 by General Wheeler, then Chairman of the Joint Chiefs of Staff, regarding the deployment of American forces in Spain in the absence of a security treaty:

By the presence of the United States forces in Spain the United States gives Spain a far more visible and credible security guarantee than any written document.

Both experience and logic show that, to the extent the President controls deployment of the Armed Forces, he also has the de facto power of initiating war.

It seems appropriate, therefore, indeed urgent, to affirm by law the authority of Congress as provided in the Constitution, to regulate the deployment of the Armed Forces in the absence of hostilities or their imminent threat. Such authority derives directly from the Constitution, which specifies Congress' power to "make rules for the Government and regulation of the land and naval forces." In addition, the general power of appropriation necessarily carries with it the power to specify how appropriated moneys shall and shall not be spent. Moreover, the authority of Congress to regulate the deployment of the Armed

Forces in peacetime is scarcely separable from the war power itself, inasmuch as the power to deploy the Armed Forces is also the power to precipitate hostilities or—to take the language of the war powers—to create "situations where imminent involvement in hostilities is clearly indicated. * * *" In the words of a Congressional Research Service memorandum on the subject, dated May 24, 1973,

> Almost every substantive aspect of the armed forces is an appropriate subject for regulation by the Congress; and, since the President is entirely dependent on the Congress for the forces he commands, it follows that Congress can control, directly or indirectly, the objectives for which these forces are used, at least during times of peace.

The Congressional Research Service memorandum also points out other areas in which the Congress has a constitutional responsibility to exercise control over deployment of U.S. forces overseas.

The amendment that I am offering today would serve three important purposes. First, it would require that the executive branch give the Congress, on a regular and continuing basis, detailed information on the peacetime deployment of U.S. forces. Second, it would require the President in peacetime immediately to notify and explain to the Congress "the issuance of any order to deploy any major unit of the Armed Forces of the United States from within the United States of the surrounding waters to any other geographical location of the world or from one geographical location of the world to another in any case in which—the movement results in an increased presence of such Armed Forces in the region to which the unit is deployed for a period in excess of 3 days, or—such Armed Forces are in a combat-ready status." Third, the amendment would give Congress power to restrict or prohibit by concurrent resolution the peacetime deployment of major units. If Congress so restricts or prohibits the President, he would be required within 30 days to terminate the deployment and return the deployed forces to their prior location or to the United States, its territories, and possessions.

The reporting the amendment calls for would not require additional activity on the part of the executive branch. Such classified reports are already prepared regularly by the Defense Department and provided to congressional committees on an irregular schedule. As specified in the amendment, the committees receiving the required reports would be bound to respect the appropriate injunctions of secrecy.

The amendment would not pertain when an authorization of hostilities by Congress is in effect. Thus, the provisions would not be applicable in circumstances otherwise covered in the war powers bill. Essentially, this amendment would be applicable to peacetime deployments and would allow the Congress to exercise its legal controls over the Armed Forces during periods in which the forces are not engaged in hostilities.

There are a number of exclusions from the reporting requirement in order to allow the executive branch necessary flexibility and latitude.

Major units as defined in my amendment would be a squad of aircraft, two or more major combatant vessels, or at least a brigade of troops. Movements of ballistic missile submarines would not be required to be reported under this section, nor would those of individual boats or vessels. I believe that the sizes of the units covered are such as to preclude unnecessary reporting by the executive branch.

The amendment would allow the President to transfer individual members of the Armed Forces administratively and to relocate elements of the Armed Forces to accomplish one-for-one replacement without notification. These changes would, of course, be reflected in the monthly reports. The requirement of immediate notification and explanation would come into force in the event of significant changes in our worldwide force deployments.

Mr. President, I believe this amendment is so clearly in pursuance of the explicit constitutional authority given to Congress to regulate the Armed Forces that there is no question about that aspect.

Again, however, I suppose that any President, as he has become accustomed to untrammeled power, might feel that he has the freedom to do as he pleases and to treat this as no restriction on his power.

Mr. GRIFFIN. Mr. President, will the chairman permit me to ask him a question which goes to the point he has just made?

Mr. FULBRIGHT. Certainly.

Mr. GRIFFIN. As I understand the amendment, it speaks in terms of Congress placing a restriction on the prerogatives of the President. Is that correct?

Mr. FULBRIGHT. That is correct.

Mr. GRIFFIN. By the use of the term "concurrent resolution," I take it that the Senator from Arkansas, the chairman of the committee, intends that this would not require or involve the signature of the President.

Mr. FULBRIGHT. That is my impression. The article in the Constitution gives that right explicitly to Congress.

Mr. GRIFFIN. I wish to quote a provision of the Constitution which I think it at least pertinent because we are talking about constitutional powers. I read from section 7 of Article I:

> Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

It seems to me that this amendment would certainly be changing the law. Admittedly, it requires the concurrence of both Houses of Congress. I wonder what the Senator's answer would be to the point that this does require action by the President.

Mr. FULBRIGHT. Let us assume that the bill is passed and becomes law. It would authorize these decisions or actions to be taken by concurrent resolution. That would be law. It would not have the President's signature or would not have to be overridden.

Mr. GRIFFIN. It seems to me that we would be saying that by passing such a law, we would change the Constitution.

Mr. FULBRIGHT. No, I do not think so. The Constitution provides that Congress shall have power to regulate the Armed Forces, does it not?

Mr. GRIFFIN. Yes, but the Constitution also provides for his signature.

> Every—resolution—to which the concurrence of the Senate and the House of Representatives may be necessary—shall be presented to the President of the United States.

I do not think we can point to one section of the Constitution as a means of avoiding a second. It is a point for consideration, at least.

Mr. FULBRIGHT. Would the Senator contend that if the bill is enacted, giving the President authority to take these actions regarding the deployment, in peacetime, of the Armed Forces, that would not be constitutional? That we cannot, by law, give Congress the authority to pass concurrent resolutions in pursuance of the explicit powers given to it under the Constitution?

Mr. GRIFFIN. I do not think there is any question that Congress has the power to act. The most striking example of the power of Congress was the action taken with respect to cutting off funds for the bombing of Cambodia. Congress has the power. But I do not think we can circumvent that part of the Constitution that provides that the laws that Congress passes would be subject to being sent to the President for his signature.

Mr. FULBRIGHT. There is no question that this law would be presented for his signature. We are not arguing about that. It is this law which prescribes the procedure by which this particular aspect is to be carried out. I would think that that would comply with the provision the Senator is talking about.

Mr. GRIFFIN. I suspect we are not going to be able to resolve this. I only raise it as a point that should not be overlooked. I think, in addition to the other arguments that have been made against the amendment of the distinguished chairman of the committee, there is a question of constitutionality.

Mr. FULBRIGHT. How does the Senator reconcile the all too common practice of Congress giving the President discretionary power by law? We do that in many cases, in regulatory matters, and other areas where we authorized the President by law to do certain things that are otherwise reserved to Congress. We cannot strip the Congress of constitutional powers that are basic, but we give the President much discretionary power without a law or without requiring the continued participation of the Congress. If we give the President that kind of authority, I do not understand why we could not by law give the Congress the discretionary power in this instance, especially as it relates to the power to declare war, which is generally considered exclusively in the power of Congress.

This raises another question. Perhaps the Senator from Michigan has not

thought about it. Does he think that Congress could not pass a declaration of war without the concurrence of the President?

Mr. GRIFFIN. No. It is not specified as an exception in the particular language that I have read, and I do not believe that it would be an exception. The Constitution does specify the exception of a motion to adjourn, and because the declaration of war power is spelled out in another section, I do not think it would be an exception. But I do not equate that with the situation the Senator is addressing himself to in his amendment.

Mr. FULBRIGHT. This is closely related to that.

Mr. GRIFFIN. Close is not quite good enough.

Mr. FULBRIGHT. Of course, I confess Congress has not explicitly undertaken it to this extent, but in many of our past actions, as the Senator knows, it has often taken action with regard to the deployment of troops. There was a long debate on the floor about sending troops to Germany. That does not go to the point the Senator is speaking on. There was no question Congress had that basic authority. In most cases in the past we have not chosen to exercise it. The tremendous enlargement of Presidential power has come about because Congress never legislated in the area of congressional responsibility.

Mr. GRIFFIN. I generally agree with the Senator. The Congress has had power all along. The fact is that it has never exercised it.

Mr. FULBRIGHT. It has never exercised it, and in the absence of legislation and any congressional direction, the President takes over, and we have only ourselves to blame, in effect.

Mr. GRIFFIN. But the question I raised is a constitutional one, and that is whether or not, in the absence of a declaration of war, which I will concede ad arguendo would not require the signature of the President, or under a resolution to adjourn under the Constitution, this purpose can be accomplished by a concurrent resolution, which need not be presented to the President for his signature. The language of the Constitution in section 7 of article I seems to be so very clear that at least the question is one that ought to give us some concern.

Mr. FULBRIGHT. Another analogy strikes me. I will ask the Senator if Congress has not on numerous occasions by law given the Executive the power to reorganize the Government and then retained to itself the power to veto it by concurrent resolution without Presidential participation. Is that not a very common practice?

Mr. GRIFFIN. I will say to the Senator a very learned law review article, the pertinent part of which I will have inserted in the RECORD later, discusses the constitutionality of this particular type of legislation, pointed me in the direction of this question here. It is true that we have done that. It is a different situation in that the action is initiated by the President, but there is a good deal of concern in some quarters about whether or not it is constitutional in light of this. It has not been sufficiently tested, I would say, in the Supreme Court.

I think when we go into a matter which involves not just the reorganization of the executive branch of the Government but, rather, a more fundamental area such as the war power, it would be stretching the concept much further and would be much more subject to attack.

Mr. FULBRIGHT. All that is a matter of opinion, but there is the general feeling that the war power is exclusively a congressional responsibility, as much a part of the constitutional authority as raising money. Declaring war is absolutely fundamental. Raising money has much relation to carrying on the war, of course. We undertake to specify the number of troops and the pay of the troops. All of that is related to the war power. We have the responsibility for raising an army and navy. Most of the cases the Senator is speaking of involve the participation of the Congress, with the reserved power of overriding a veto.

I take it the Senator is making the narrow point of the concurrent resolution, and that it ought to be by joint resolution. That is a significant point that arises in this discussion. It has not been tested to a great extent because Congress has never sought to exert the power in many of these areas. There is little judicial history on many of these questions simply because Congress has not seen fit to exercise its power. I think we have rocked along for 200 years on the assumption that each branch of the Government has respect for the other branch. There has been a sort of gentleman's agreement—"You operate within your sphere and we will respect that." Vetoes in the past have been relatively few, especially if Congress is united and in a fairly strong position. Most Presidents have been disposed to accept that in most cases. They rarely veto. But it seems to me that one of the consequences, especially of the war in Vietnam, which has been, outside of the Civil War, I believe the most divisive occurrence in our history, is that there has arisen, as a result, a tremendous difference of opinion between the Senate and the past President. There has been a kind of bitterness and resentment that has broken down what might be called a gentlemen's acceptance of each other's role.

Of course, I participated in it, and I felt extremely disappointed in President Johnson because I thought he had hoodwinked me and the Senate. He had misrepresented the need for legislation which got us into a situation which I thought was absolutely inexcusable. I am sure he did it because he thought it was in the national interest. I do not doubt his patriotism. He just thought we were not to be trusted with the truth and the American people were not to be trusted with the truth. In the election of 1964 he ran on a platform directly opposite to what he had in mind. So the trust in the relations between the Executive and the Congress began to break down.

The war became bitter and tragic, and it undermined our financial condition. Things got worse and worse.

There has been this long period of mistrust between the Executive and the legislative branches. All we are trying to do now is, in a sense, to reaffirm the principles of the Constitution in this legislation. As I have said very often, if we could accept and could resurrect the old spirit of cooperation, we would not need this legislation. The Constitution is clear enough, in my view, if we would follow it and if the Executive would follow it. But the Executive has not followed it.

There has not only been this matter, but we have also had impoundment legislation and Executive privilege legislation, all of which were not considered necessary before because there had been no abuse of power by the executive branch to an extent that required any action by the Congress. It was very restricted. It arose in very minor ways in the past. That is also true with respect to impoundment. There has always been the question of impoundment, but not wholesale impoundment where the Congress felt it was being thwarted in major policy.

If we could rely on the good faith of the Executive, we would not need the bill. However, since we cannot do so, so we do need a bill.

I feel it is an attempt to restore the validity of the Constitution by legislation. It ought not to be necessary. However, under the circumstances, it should be done.

In the case of deployment, there has been little, if any, Executive abuse of power. Usually in the past, Executives have come to the Congress and asked for authority to send troops, as former President Eisenhower did with respect to the Middle East. And the truth was told about that matter. We debated it and approved of it. There was no question then. However, now there is the feeling that the President has developed the idea that, as Commander in Chief, he can do anything he likes to do.

That assertion has brought forth the reaction of the Congress. Congress cannot accept the Executive's theory. We are forced to react in this fashion and act on this legislation. I certainly approve of it.

The only questions that always arise are the means and the best way to accomplish the objective. This is inherent in every bill that comes before Congress. No piece of legislation satisfies everyone. We all have different views as to some aspect of the matter that could be more effective in accomplishing the announced and accepted objectives.

That is about the story, Mr. President. I would hope for the acceptance of a very modest assertion of the power to control deployment which, in itself, as General Wheeler so well said, gives a greater guarantee than any written instrument. He says in effect that "if you put the troops in Spain, we are more likely to come to your rescue than if we had a treaty. Don't worry about it." There was no treaty. We put 10,000 soldiers there. General Wheeler is very much correct on that.

Therefore, to implement our power—responsibility more than power—we must try to control deployments in peacetime so that we do not enter into a war as a result of our deployments.

Again I say that if it were not for the

arbitrary attitude of the Executive that they can put these troops in Spain by executive agreement and without a treaty, I would not be thinking of such a provision.

Again we pleaded with the Executive to submit a Spanish agreement by treaty, which would have been a quite satisfactory procedure. In the absence of a treaty we had no opportunity to approve or disapprove of circumstances which could lead us into an involvement in war. However, they refused.

We have recently had the same sort of thing in a little different area in the taking over or opening of the Bahrein Naval Base and the continuation of the Azores agreement. They are not as direct as the Spanish agreement was. However, where we have these operations of naval bases and troops, they should be submitted to the Senate.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that that part of the Harvard Law Review article dealing with the constitutionality of the concurrent resolution process, to which I referred, be printed in the RECORD at the conclusion of our colloquy.

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

[From the Harvard Law Review, February 1953]

THE CONTROL OF FEDERAL ADMINISTRATION BY CONGRESSIONAL RESOLUTIONS AND COMMITTEES

(By Robert W. Ginnane)

* * * * *

C. CONSTITUTIONALITY OF THE USE OF CONCURRENT RESOLUTIONS

It is one purpose of this article to suggest that there are grave doubts as to the constitutionality of all of the recent statutory provisions described above for the use of congressional resolutions. As stated earlier, these doubts are not particularly engendered by any rigid classification of governmental acts as legislative or executive. That many acts of government may be performed with equal propriety by the legislative branch or the executive branch may be conceded. The objection is rather to the manner of the exercise of power. As one of the checks upon undue concentration of governmental power in a single organ of government, Article I, Section 7, makes presidential approval, or veto subject to being overridden by two-thirds vote of each house, an essential element in the exercise of power by Congress. That the President cannot be excluded from the legislative process by the simple expedient of embodying policy decisions having the force of law in the form of "resolutions" not presented to him is made clear by the second paragraph of Section 7, providing that "Every order, resolution, or vote" requiring the concurrence of Senate and House, except on a question of adjournment, must be presented to the President as in the case of bills—a provision added for the express purpose of preventing evasion of the President's veto.

Since the Constitution plainly requires presidential participation in the exercise of legislative power, a power must be classified as non-legislative to justify its exercise by Congress or one of its branches in a way other than that prescribed.[108] But it is clear that the policy decision and legal consequences of concurrent resolutions used in the ways that have been described—for example, the disapproval of a reorganization plan, the termination of the Attorney General's suspension of deportation of an alien, or the imposition of an arms embargo—are indistinguishable from the policy decision and legal consequences of ordinary legislation. The absence of distinction is particularly evident where the statute provides for termination or repeal by concurrent resolution, since it can hardly be contended that the repeal of a statute is less of a legislative act than its original enactment. The validity of such provisions is further undermined by the specific refusal of the Constitutional Convention of 1787 to except repeal legislation from the requirement that proposed legislation be presented to the President.

This view also finds support in the interpretation given by Congres to Article I, Section 7 in all but the most recent years. In the first explicit congressional statement, in 1879, the Senate Committee on the Judiciary stated that concurrent resolutions which "contain matter which is properly to be regarded as legislative in its character and effect" must be submitted to the President, and that "the nature or substance of the resolution, and not its form, controls the question of its disposition."[109] That this was the view adopted by Congress in practice is demonstrated strikingly by the passage of 150 years after the adoption of the Constitution before statutes began to provide for such uses of congressional reolutions. And until the enactment of such statutory provisions became commonplace, their validity was challenged vigorously in both Senate and House, without regard for party lines, as well as by Attorney General Mitchell and President Roosevelt.

Finally, the scope of the potential application of such provisions is alone enough to suggest a serious question as to their constitutionality. If the modern uses of the concurrent resolution are valid, then Congress is free to provide, for example, that any proposed loan by a federal lending agency may be vetoed by a concurrent resolution, or that the maximum or minimum price for a particular comodity may be prescribed by a concurrent resolution. Again, it would be theoretically possible for Congress to pass, perhaps over the President's veto, legislation providing that each section of the United States Code could be terminated or repealed by concurrent resolution. Not many such statutory provisions would be required to alter profoundly the distribution of power in the Federal Government.

The legal and practical arguments advanced by proponents of such statutory provisions seem unpersuasive. Thus they contend that the operation of the statute merely depends upon occurrence of a condition precedent—the fact or event of Congress passing a resolution, or a fact to be found by Congress. Specifically, they have urged that if the exercise of statutory powers can be made contingent upon findings of fact by an executive officer, as in the tariff cases,[110] or upon the favorable vote of the persons who will be affected by proposed governmental action, as under some of the agricultural marketing statutes,[111] it is "difficult to believe that the effectiveness of action legislative in character . . . may not be conditioned on a vote of the two legislative bodies of the Congress."[112] The answer to such contentions would seem to be that it is one thing for a statute to provide that, after Congress and the President have both performed their legislative roles, the application of a statute may be further conditioned upon an executive officer's finding of fact or upon a favorable vote of interested persons, and it is another thing for Congress to reseve to itself, excluding the President, the power of further determining the application of a statute. It is a non sequitur to say that, since a statute can delegate a power to someone not bound by the procedure prescribed in the Constitution for Congress' exercise of the power, it can therefore "delegate" the power to Congress free of constitutional restrictions on the manner of its exercise. The result—and, indeed, the frankly stated purpose—of such provisions is to exclude the President from decisions of Congress which in their legal consequences are indistinguishable from statutes and which are seemingly the type of policy decisions which Article I, Section 7 requires to be submitted to the President. In brief, it is difficult to avoid the conclusion that the express purpose of the third paragraph of that section to insure that the President's role in the legislative process should not be eliminated merely by giving legislative decisions another name[113] would be thwarted by statutes which reserve final governmental decisions for determinations as "events" by Congress alone.

Another legal basis adduced for such statutory provisions is found in the informal suggestion of the Department of Justice, made in connection with the Reorganization Act of 1949, that a provision for disapproval of reorganization plans by concurrent resolution could be justified as an agreement by the President not to act without consulting Congress or in the face of its disapproval. However, this theory of an agreement to consult would seem to prove both too little and too much. Certainly, the theory would not support provisions which were enacted over the President's veto if the action to be approved is not initiated by the President. On the other hand, this agreement theory goes too far in that it would justify making administrative action subject to disapproval by legislative committees—a highly dubious matter, as is pointed out below. In any event, it would seem that the President's role under the Constitution cannot be altered by agreement.

In the case of the Reorganization Act of 1949, which provided for disapproval by either House of reorganization plans proposed by the President, it is arguable that there is simply a reversal of the chronological order in which Congress and the President usually act in the legislative process. The President has indicated his approval by preparing the plan and each House has indicated its approval by failure to pass a resolution of disapproval. It is not clear, however, whether the power of each House to determine its own procedure[114] can be viewed as including the power to provide that a bill will be deemed passed unless specifically disap-

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[108] However, it could then be argued that members of Congress, in their capacities as such, may not perform non-legislative functions. It is settled that Article III judges may not perform non-judicial functions in their capacities as judges. Federal Radio Comm'n v. General Elec. Co., 281 U.S. 464 (1930). Under the doctrine of Springer v. Philippine Islands, 277 U.S. 189 (1928), it would seem that Congress cannot confer excutive powers upon itself or its members, since Article II, § 2 vests exclusive power to appoint federal officers in the President with advice and consent of the Senate (or if Congress so prescribes, in the President alone, in the courts of law, or in the heads of departments). Moreover, Article I, § 6 provides that no person holding any office under the United States Government may be a member of Congress during his continuance in office. See note 160 *infra*.

[109] See pp. 573–74 *supra*.

[110] Marshall Field & Co. v. Clark, 143 U.S. 649 (1892); J. W. Hampton, Jr. & Co. v. United States, 276 U.S. 394 (1928).

[111] Currin v. Wallace, 306 U.S. 1 (1939); United States v. Rock Royal Cooperative, Inc., 307 U.S. 533 (1939).

[112] H.R. REP. No. 120, 76th Cong., 1st Sess. 6 (1939).

[113] See pp. 572–73 *supra*.

[114] See Christoffel v. United States, 338 U.S. 84 (1948).

proved within a certain period of time. There is at least a question under the Constitution whether the mere inaction of both Houses, which conceivably might reflect little or no deliberation, is an acceptable substitute for the deliberation which is ordinarily assured by the requirement of an affirmative vote. And even if the theory of legislative action by inaction is sound—or indeed, even if proposed executive action is made subject to prior affirmative approval by both Houses as in the latest provisions for approval of deportation suspension—it would seem that the proposal should nevertheless be presented to the President after approval by Congress as prescribed in the Constitution. If such a method for congressional control over reorganizations is to be justified by characterizing it as "legislation," there seems no reason why the constitutional requirements for legislation should not be satisfied, even though the President's approval be a foregone conclusion.

The practical justifications seem equally unpersuasive. It has been suggested, notably by Professor Corwin, that in an era of international tension which impels Congress to delegate extraordinary powers to the executive branch, statutory provisions for termination by concurrent resolution are an essential means of preserving our constitutional equilibrium—namely, by giving Congress a compensating power to retract the delegated authority without the necessity of overcoming presidential vetoes.[115] Such a fundamental political consideration, if real, would probably carry great weight with the courts.[116] However, as Madison foresaw, Congress seems to have been able to maintain effective control over its great delegations of power by the device of enacting statutes of short duration, thus providing Congress with regular opportunities to determine whether to renew or modify the grant. Another effective device is that of providing in appropriation acts that no funds shall be used for specified purposes. The adequacy of these techniques is suggested by the fact that Congress has not yet found it necessary to pass a concurrent resolution purporting to terminate a statute or to terminate aid to a particular country.

The federal courts have not yet had occasion to consider the validity of any of these statutory provisions for the use of congressional resolutions. However, the few state court decisions on similar state statutory provisions are either adverse or unpersuasive. Thus the Supreme Court of New Hampshire held invalid a state statute which, like the Federal Reorganization Acts of 1939 and 1945, provided for the submission by the governor to the legislature of reorganization plans which were to become effective if within 25 days "there has not been passed by the two houses a concurrent resolution stating in substance that the [legislature] does not favor the reorganization plan."[117] It found a violation of the provision of the state constitution that "The supreme legislative power, within this state, shall be vested in the senate and house of representatives, each of which shall have a negative on the other,"[118] in that "Each house has undertaken in advance to surrender to the other its constitutional authority to veto or refuse assent to action taken or approved by the other."[119] The dissenting judges regarded the provision as "merely one of the checks or restraints upon the exercise of the subordinate legislative power delegated to the Governor."[120] The rationale of the New Hampshire court would seem equally applicable under the more customary constitutional requirement that both houses of a bicameral legislature must act concurrently, and the decision thus supports the view of the Senate Judiciary Committee in 1945 that neither House of Congress can be deprived of its power to prevent a legislative proposal from becoming law and that therefore each House must be enabled to prevent a reorganization plan from becoming effective.

In contrast, the Supreme Court of Colorado has recently upheld a statute under which the proceeds from certain taxes could be pledged as security for bonds to be issued to finance highway construction, with the proviso "that any such pledge shall first be approved by joint resolution of the Senate and House of Representatives."[121] Article V, Section 39, of the Colorado constitution differs from the third paragraph of Article I, Section 7, of the Federal Constitution only in that the exception from the requirement of submission to the executive of concurrent action on questions of adjournment is followed by the words "or relating solely to the transaction of business of the two houses." The Colorado court upheld the statute on the theory that such a resolution, "not being legislative in character, related solely to the business of the General Assembly." This theory seems hardly tenable and suggests that the legislature could, by enacting such statutes, classify almost any kind of governmental action as its exclusive concern.

The only judicial consideration of provisions for the termination of a statute by concurrent resolution is found in *Matter of Moran v. La Guardia*.[122] A New York statute authorizing New York City to reduce certain civil service salaries during the emergency proclaimed by the statute provided that the provisions should apply "until the legislature shall find their further operation unnecessary." The legislature passed a bill to repeal this statute which was vetoed by the governor. Thereafter, the legislature sought to achieve the same result by passing a resolution not submitted to the governor. A majority of four of the seven judges of the Court of Appeals apparently held that a statute could not provide for its termination by a concurrent resolution, stating that:

"A concurrent resolution of the Legislature is not effective to modify or repeal a statutory enactment. . . . To repeal or modify a statute requires a legislative act of equal dignity and import. Nothing less than another statute will suffice. A concurrent resolution of the two Houses is not a statute. . . . It resembles a statute neither in its mode of passage nor in its consequences. . . . But more important, its adoption is complete without the concurrent action of the Governor, or lacking this, passage by a two-thirds vote of each house of the Legislature over his veto."[123]

The court obscured the precise basis of its decision, however, by concluding further that the statute did not contemplate termination by a resolution not submitted to the governor. The dissenting judges, pointing out that the termination clause was entirely superfluous if construed to mean that termination could be effected only by a statute, argued that the statute both could and did provide for its termination by a resolution embodying a finding of fact by the legislature. While the veto provisions of the New York constitution[124] are almost identical with the first paragraph of Article I, Section 7 of the Federal Constitution, they do not contain the further provision found in the third paragraph of the latter that every order, resolution, or vote requiring the concurrence of both Houses must be submitted to the President. Accordingly, it would be much easier under the Federal Constitution to conclude that a statute could not provide for its termination by concurrent resolution.

[115] See Corwin, Total War and the Constitution 45–47 (1947).

[116] See Myers v. United States, 272 U.S. 52, 134–35 (1926).

[117] Opinion of the Justices, 96 N.H. 517, 83 A.2d 738 (1950).

[118] N.H. Const. Part II, Art. 2.

[119] 96 N.H. at 522, 83 A.2d at 741–42.

[120] 96 N.H. at 529, 83 A.2d at 745.

[121] Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

[122] 270 N.Y. 450, 1 N.E.2d 961 (1936).

[123] 270 N.Y. at 452, 1 N.E. 2d at 962.

[124] N.Y. Const. Art. IV, § 7.

Mr. MUSKIE. Mr. President, I yield 5 minutes to the Senator from Texas.

Mr. TOWER. Mr. President, I disagee strongly with the assertion of the Senator from Arkansas that what Congress is doing here is reasserting it own constitutional authority and giving validity to the intent of the framers of the Constitution.

I believe that the amendment offered by the Senator from Arkansas does great violence to the constitutional role of the President of the United States as Commander in Chief of the armed services. And the latter does equal violence to the constitutional role of the President as the principal spokesman on international matters, as the principal formulator and implementor of American foreign policy.

S. 440 is bad enough and is enough of a violation, in my estimation, of the constitutional prerogatives of the President without adding the amendment offered by the Senator from Arkansas.

A great deal has been said about the relationship between the Executive and the Congress, and that if we had gone along with each branch respecting the other, the thing would have been all right. However, it was said that the President has been indisposed to cooperate with the Congress and that therefore the Congress asserts itself in this matter.

The fact of the matter is that President Nixon was the first President since Zachary Taylor, the first President in 120 years, entering upon his first term of office with both Houses of the Congress in control of the opposition party. There has, I think, been a great deal of partisanship involved to the extent that it might be referred to as constipation between the Congress and the President. And I am not saying that the partisanship is confined to just one branch. I would not want to assert that at all.

The fact is that there is a partisan climate at this moment which augers well, unfortunately, for the passage of legislation of this kind, because this is, I guess we might call it, "Kick the President Season," and there is a mood here in Washington that is not conducive to cool consideration of the merits of legislation of this kind.

I would remind Congress that President Nixon was reelected last year by an overwhelming majority of the votes of the American people. And that was not just an electoral college majority. It was a vast public majority. And the principal issue in the campaign was foreign policy. Two sharply different views were presented in the campaign, on foreign policy and on national security policy. And the policy advanced by the President of the United States received the overwhelming support of the American people.

By passing legislation of this kind, it is my view that we are flying in the teeth of the mandate conferred by the American people on the President of the United States. They have expressed at the ballot box their confidence in his ability to formulate and implement a

foreign policy that is in the best interest of the United States.

We seek here now to hamstring the President. And I am hopeful that the Senate will reject the amendment offered by the Senator from Arkansas that seeks, in effect, to give Congress the control over the deployment of troops.

We have great difficulty in agreeing on a number of things here. And a failure to deploy American troops would be more, I think, than the Congress could expeditiously handle.

Therefore, I believe that the amendment of the Senator from Arkansas should be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I yield myself 6 minutes.

May I make clear at the outset that I respect immensely the capability, the knowledge, and the background of the distinguished chairman of the Committee on Foreign Relations, and I often follow his lead in these matters.

With respect to this amendment, the basic position which I take is that it again raises the risk of loading the bill with serious questions that ought not to be loaded upon it at this time. One of the questions has already been discussed by the distinguished Senator and the minority whip—the question of whether or not the concurrent resolution provision is constitutional. A second question is the President's constitutional power to deploy the Armed Forces.

Congress undoubtedly has authority in this field, and the President has some authority in this field. As the Senator from Arkansas so eloquently pointed out, what we have here is another one of those gray areas that is better left alone. Because it is such a gray area, and because the question the amendment raises is a significant one and may be a serious one, I prefer not to add it to the bill at this time. For that reason I shall oppose the amendment.

I yield the distinguished Senator from New York such time as he may require.

Mr. JAVITS. I need just 4 minutes.

Mr. President, this amendment is not unlike the Eagleton amendment. It deals with causes of war. The Senator from Arkansas (Mr. FULBRIGHT), out of his extremely rich experience, says that if you pile troops or forces in a given area, that could enhance the possibility of war.

But, here again, we must stick to the basic purpose of our bill: It is a methodology. It is a way in which to give Congress the opportunity and the frame of reference in law by which it can assert itself in respect to deciding on war—not the causes of war, but war. To be faithful to that purpose, we must reject this amendment.

For those reasons, not because I do not understand or am not sympathetic, or because there is no congressional power—there is; Congress can pass laws about deployment. I must say to the Senator from Arkansas I have grave doubts about a concurrent resolution. I doubt that the congressional power respecting the President's power, where both of them are in a given area, as in warmaking or in deployment, can be asserted other than by law. A concurrent resolution is not law, it is nonstatutory. I think where concurrent resolutions can be used is where you have a power that Congress has conferred under its authority to make general law; and it can take that power back, if the President signs the bill providing that we can take it back into law.

As to constitutional authority, I have grave doubts about it. Incidentally, I do not know whether that has been decided by the courts, but I am giving my best opinion, and am not depending on it for any war powers legislation.

But laying that aside, my point is that it is another question of war we would be trying to deal with. It may be a very important one, like Senator EAGLETON'S, but one we simply cannot encompass in this bill.

Another thing I would like to call to Senator FULBRIGHT'S attention, because I have little doubt, whether he succeeds or fails here, that this is a subject deep in his mind and he will pursue it. I would like to call to his attention the secrecy problem, a very serious problem in this respect, because he himself contemplates it. He says the President shall provide "under appropriate injunctions of secrecy"—that is page 1, lines 3 and 4, of his own amendment—and that is very necessary, because, after all, that is one of the legitimate secrets of any country, to wit, the deployment of its armed forces.

The question is, How do you break that secrecy, assuming it can be removed on due notice from the President? Suppose the President does not give you due notice? Then when we pass the concurrent resolution, we are breaking the secrecy. I do not say that is impossible; we can live with that, too. Maybe we, too, have to function in some things in secrecy, and be tough enough to discipline a Member who breaks the secrecy, which is something we have never done. But that takes a good deal more thought and refinement than we can put into this bill with an hour's debate.

On the question of constitutionality, I would like to say that while I believe Congress does have power to legislate respecting peacetime deployment, the constitutional interplay between Congress and the Commander in Chief is somewhat different. The respective authorities are different, and perhaps the Commander in Chief's authority is stronger vis-a-vis Congress with respect to the details of the locus of peacetime deployment of the forces under his command. This is an issue which should be explored and clarified in hearings such as we did with respect to the war powers.

Mr. FULBRIGHT. Mr. President, will the Senator yield for clarification?

Mr. JAVITS. Yes.

Mr. FULBRIGHT. I want to emphasize that this applies only in peacetime. Today there are no secrets, I believe, as to where our troops are. Every day we read about 70,000 in Germany, so many in Ethiopia—we read about it almost daily in the press, as to where they are. This applies only in peacetime. I am not undertaking to deploy them in wartime.

Mr. JAVITS. Can the Senator tell us where the Polaris submarines are based and deployed today?

Mr. FULBRIGHT. Mr. President, this amendment explicitly exempts the Polaris submarines. It should not apply to submarines. But they are not affected. I am only talking about the things the amendment talks about.

In the daily press—I read just today how many there are in Japan, and how many in Korea. So when you talk about peacetime, I think it is not really all that secret. I do not think it is a major problem. That is all I am saying.

Mr. JAVITS. What I am saying, Mr. President, in judging the delicacy of what the Senator is trying to do, is that he himself—not I, he—in drafting the amendment, found it necessary to say that the information shall be provided under the appropriate injunctions of secrecy.

Therefore, if the President is not going to dispel the very thing he calls for, but we are going to dispel it, we have to think about that; we cannot just say "Do it."

I say this only to emphasize that this is an intricate, subtle, and difficult subject. It is not a subject that should be disposed of hastily, or superficially, in terms of a quick debate under time limitation. We have had no hearings and only a cursory debate.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. FULBRIGHT. Mr. President, will the Senator yield for one observation?

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. I yield the Senator such time as he may require.

Mr. FULBRIGHT. This idea that it is delicate and we ought not to interfere, of course, is at the root of our trouble. We have proceeded under this kind of myth of Presidential infallibility for about 30 or 40 years, and everyone is conditioned to believe that in some mysterious way the President is reliable on secrecy, that he has wisdom, and we ought not to interfere with it. This is the root of our problem. I find that there is an assumption in this bill as it comes from the committee that certain sections, like section 6, are sort of based upon an assumption that Congress has to assert its power legislatively. We have gotten into the position that we are so conditioned we cannot do anything. But I do not think it is valid to assume that the Executive is so much more reliable than Congress that he can be absolutely depended upon.

Mr. JAVITS. Mr. President, if I may have 1 more minute to reply, this whole bill is a massive negation of that assumption.

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

The PRESIDING OFFICER (Mr. BIDEN). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Arkansas (Mr. FULBRIGHT).

The amendment was rejected.

Mr. JAVITS. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. BIDEN). Pursuant to the previous order, the hour of 12 o'clock noon having arrived, the Senate will now proceed to vote on amendment No. 366 of the Senator from Missouri (Mr. EAGLETON). On this question, the yeas and nays have been ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum briefly.

The PRESIDING OFFICER. The Senator has that right. 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 PRESIDING OFFICER (Mr. CLARK). Without objection, it is so ordered.

The question is on agreeing to amendment No. 366 of the Senator from Missouri (Mr. EAGLETON).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Indiana (Mr. HARTKE), the Senator from Wyoming (Mr. MCGEE), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) and the Senator from Arizona (Mr. GOLDWATER) are absent because of illness in their respective families.

The Senator from Alaska (Mr. STEVENS) is absent by leave of the Senate on account of illness in his family.

The Senator from New York (Mr. BUCKLEY), the Senator from Colorado (Mr. DOMINICK), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from Virginia (Mr. SCOTT) is absent on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

The result was announced—yeas 34, nays 53, as follows:

[No. 310 Leg.]

YEAS—34

Abourezk	Haskell	Packwood
Bayh	Hatfield	Pell
Burdick	Hathaway	Proxmire
Byrd, Robert C.	Hughes	Randolph
Case	Inouye	Ribicoff
Church	Kennedy	Schweiker
Clark	Mansfield	Stevenson
Cranston	Mathias	Symington
Eagleton	Mondale	Tunney
Fulbright	Montoya	Williams
Gravel	Moss	
Hart	Nelson	

NAYS—53

Aiken	Eastland	McIntyre
Allen	Ervin	Metcalf
Baker	Fannin	Muskie
Bartlett	Fong	Nunn
Beall	Griffin	Pastore
Bellmon	Gurney	Pearson
Bennett	Hansen	Roth
Bentsen	Helms	Saxbe
Bible	Hollings	Scott, Pa.
Biden	Hruska	Sparkman
Brock	Huddleston	Stafford
Brooke	Humphrey	Taft
Cannon	Jackson	Talmadge
Chiles	Javits	Thurmond
Cook	Johnston	Tower
Curtis	Long	Weicker
Dole	Magnuson	Young
Domenici	McClure	

NOT VOTING—13

Buckley	Goldwater	Percy
Byrd, Harry F., Jr.	Hartke	Scott, Va.
Cotton	McClellan	Stennis
Dominick	McGee	Stevens
	McGovern	

So Mr. EAGLETON's amendment (No. 366) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISTRICT OF COLUMBIA APPROPRIATIONS, 1974

The PRESIDING OFFICER. Under the previous order the Senate will proceed to vote on H.R. 8658, which the clerk will state by title.

The bill was stated by title, as follows:

A bill (H.R. 8658) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1974, and for other purposes.

The PRESIDING OFFICER. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Indiana (Mr. HARTKE), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON), and the Senator from Arizona (Mr. GOLDWATER) are absent because of illness in their respective families.

The Senator from New York (Mr. BUCKLEY), and the Senator from Alaska (Mr. STEVENS) is absent by leave of the Senate on account of illness in his family.

The Senator from Colorado (Mr. DOMINICK) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from Virginia (Mr. SCOTT) is absent on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "yea."

The result was announced—yeas 84, nays 3, as follows:

[No. 311 Leg.]

YEAS—84

Aiken	Fannin	Montoya
Baker	Fong	Moss
Bartlett	Fulbright	Muskie
Bayh	Gravel	Nelson
Beall	Griffin	Nunn
Bellmon	Gurney	Packwood
Bennett	Hansen	Pastore
Bentsen	Hart	Pearson
Bible	Haskell	Pell
Biden	Hatfield	Proxmire
Brock	Hathaway	Randolph
Brooke	Hollings	Ribicoff
Burdick	Hruska	Roth
Byrd, Harry F., Jr.	Huddleston	Saxbe
Byrd, Robert C.	Hughes	Schweiker
Cannon	Humphrey	Scott, Pa.
Case	Inouye	Sparkman
Chiles	Jackson	Stafford
Church	Javits	Stevenson
Clark	Johnston	Symington
Cook	Kennedy	Taft
Cranston	Long	Thurmond
Curtis	Magnuson	Tower
Dole	Mansfield	Tunney
Domenici	Mathias	Weicker
Eagleton	McClure	Williams
Eastland	McIntyre	Young
Ervin	Metcalf	
	Mondale	

NAYS—3

Allen	Helms	Talmadge

NOT VOTING—13

Abourezk	Hartke	Scott, Va.
Buckley	McClellan	Stennis
Cotton	McGee	Stevens
Dominick	McGovern	
Goldwater	Percy	

So the bill (H.R. 8658) was passed.

Mr. BAYH. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. BAYH. Mr. President, I move that the Senate insist upon its amendments and request a conference thereon with the House of Representatives, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. CLARK) appointed Mr. BAYH, Mr. MCCLELLAN, Mr. INOUYE, Mr. CHILES, Mr. EAGLETON, Mr. MATHIAS, and Mr. BELLMON conferees on the part of the Senate.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

(For nominations received today, see the end of Senate proceedings.)

WAR POWERS ACT

The Senate continued with the consideration of the bill (S. 440) to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by Congress.

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that I may be permitted to yield to the Senator from North Carolina (Mr. ERVIN) for 5 minutes, without the time being charged to either side.

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

Mr. ERVIN. Mr. President, despite the popularity of the so-called war powers bill, I cannot in good conscience support it. The reasons for my opposition are extremely simple. The Constitution clearly makes a distinction between two kinds of wars.

The 11th clause of section 8 of the first article gives Congress the power to declare war. That clearly refers to any offensive war in which the United States may engage. This is made manifest by section 4 of article IV which says:

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; . . .

Now the question occurs, By what official is that power to be exercised? It is clearly to be exercised by the President, because section 2 of article II of the Constitution says:

> The President shall be Commander in Chief of the Army and the Navy of the United States . . .

This bill provides in section 5 that the President of the United States, as the Commander in Chief of the Army and Navy of the United States, cannot exercise his constitutional power, yea, his constitutional duty, to protect this country against invasion for more than 30 days without the consent of the Congress.

We hear much nowadays about the separation of powers. Here is a power and a duty which the Constitution clearly imposes upon the President of the United States, to use the Armed Forces to protect this country against invasion. And here is a bill which says expressly that the President of the United States cannot perform his constitutional duty and cannot exercise his constitutional power to protect this country against invasion for more than 30 days without the affirmative consent of Congress.

Mr. President, those are the reasons for my opposition to the bill. And I thank my good friend, the Senator from Arkansas for his great generosity in yielding me 5 minutes in which to speak at this time.

Mr. GRIFFIN. Mr. President, will the Senator yield for a brief elaboration of his point?

Mr. ERVIN. I yield.

Mr. GRIFFIN. Mr. President, is it not true if we recognize, as this bill does, that the President does have power under the Constitution for 30 days, that it is a little bit unusual and indeed impractical to suggest that we can limit his constitutional power by simple statute and limit it arbitrarily to 30 days?

Mr. ERVIN. The Senator is correct. In my opinion, in spite of the good purposes of the bill and the lofty motives of those who support it, I think the bill is an absurdity as a practical matter.

We used to have a lot of fighting in my old hometown around the court square. We had an ex-sheriff by the name of Alex Duckworth, who drove by there in his buggy one day when two men were in a fight.

The ex-sheriff asked, "Whose fight is this?"

One of the fighting men said, "Anybody's."

The ex-sheriff said, "I am in it."

One of the other men gave him a hefty punch on the jaw and knocked him down. The ex-sheriff jumped up and said, "I am out of it."

This measure is an absurdity. It says that when the United States is invaded, Armed Forces of the United States must get out of the fight against an invader at the end of 30 days if the Congress does not take affirmative action within that time to authorize the President to continue to employ the Armed Forces to resist the invasion. The bill is not only unconstitutional, but is also impractical of operation. In short, it is an absurdity. Under it, the President must convert Old Glory into a white flag within 30 days if Congress does not expressly authorize him to perform the duty the Constitution imposes on him to protect the Nation against invasion.

Mr. GRIFFIN. Mr. President, as a Senator on this side of the aisle, I want to thank a proponent of the bill for yielding time to an opponent of the bill.

Mr. FULBRIGHT. Mr. President, I did not yield the floor.

The Senator asked me if as a matter of courtesy, I would yield to him. I asked that the Senator be given 5 minutes without it being charged to either side. I had the right to the floor under the previous agreement.

Mr. GRIFFIN. Of course.

Mr. FULBRIGHT. Mr. President, I do not want to make a point of it. I do not happen to agree with the Senator from North Carolina. He has fallen prey to the same illusions as many other people in the country, that the only person who is interested in the security of the United States is the President of the United States.

I remember the first time that Secretary of Defense Laird came up to testify before the Foreign Relations Committee. He emphasized that now that he had left the Congress and gone over to the Office of Secretary of Defense, he had a very special responsibility for the security of the United States that overrode everything else and that he was the only man qualified to say what was in the interest and security of the United States.

I am afraid, I must say, with all due deference to a man rendering such important service to our country today, that I think his statement was a statement to the effect that the Congress had no interest in the security of the United States or in protecting the Nation's institutions.

I do not believe that. I think that the President can be misled more easily than Congress as to what is in the security of the United States and as to what is a proper way to protect the independence of Arkansas or North Carolina.

I do not accept the basic assumption that all wisdom resides in the White House, no matter who the occupant is.

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

Mr. FULBRIGHT. Mr. President, I yield for a question.

Mr. ERVIN. Mr. President, I want to say that the Senator from North Carolina does not adhere to the assumption that the Senator from Arkansas insinuates he does on this occasion.

The Senator from North Carolina has fought hard to sustain the doctrine of the separation of powers and to secure the recognition of the powers of the Congress. However, the Senator from North Carolina will fight equally as hard to sustain the constitutional powers of the President.

The Senator from North Carolina thinks that the Founding Fathers were acting in great wisdom when they separated the powers of Government by making one public official, the President of the United States, the Commander in Chief of the Army and Navy of the United States, rather than 100 Senators and 435 Representatives.

I thank the Senator from Arkansas for his courtesy.

Mr. HUMPHREY. Mr. President, the Senate's consideration of the war powers bill comes at a critical juncture in our history.

If the Senate adopts the legislation as introduced by my distinguished colleague from New York, it will mark the end of one era and the beginning of another.

For more than a quarter of a century, we have experienced a cold war, regional hot wars, and intermittent and prolonged conflicts with varying levels of American involvement.

At the moment that we are at the threshold of at last halting American involvement in our longest war, the Congress appears ready to redefine its own war powers and those belonging to the President.

It its clear that since the end of the Second World War fast changing military technology and new codes of international political and military behavior have combined with growing Presidential power in spheres of both domestic and foreign policy. The result has been the accumulation of warmaking power in the hands of one man—the President of the United States.

This state of affairs was known well by the men who wrote our Constitution.

They had lived under the rule of a British king. They knew all too well that the absolute warmaking authority of a sovereign ruler was oppressive to his subjects, forced to pay for and die in wars declared in the "national interest" by a monarch.

Determined to avoid the oppression of royal wars, the framers of our Constitution granted the Congress the authority to declare war and the President was vested with the power of Commander in Chief.

In 1789 Jefferson wrote to Madison and commented on this vital separation of authority:

> We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.

The power to initiate war was firmly lodged with the Congress. As Madison stated, speaking of this principle:

> That the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war . . .

Congressional possession of warmaking authority is firmly planted in our Constitution. It has been upheld by our highest court, by our Presidents and by great constitutional experts.

Yet today—even as we speak—the Armed Forces of the United States are deployed in a war without the approval of the Congress. They are deployed, because the President believes it in the national interest to bomb Cambodia—to make war by skirting article I, section 8 of the Constitution. This, of course, is not the first instance of a dangerous abuse which we might call "Presidential war." We have seen it before in this and other administrations.

When a President initiates war, he is taking a power away from the Congress.

His act is unconstitutional.

He is breaking the law.

The legislation we are considering today will, in fact, make more remote the possibility that we will again be involved in a presidentially initiated war. It will do so not by reshaping or altering the constitutional powers of the President and the Congress. Rather, the war powers bill defines, delineates, and in some ways refines the powers vested in each branch of Government by the Constitution.

The central focus of the bill is undeclared wars. It governs the use of Armed Forces in the absence of a formal declaration of war. It is true that in today's world, formal declaration of war may be obsolete. But the authority of the Congress to authorize the initiation of war is certainly not obsolete.

Critics of the war powers bill have stated that it is not needed—that historical precedents are sufficient to provide adequate safeguards in the absence of a formal declaration of war.

I do not believe this to be the case.

The steady accretion of Presidential warmaking authority must be halted and limited by new statutory definitions of warmaking authority.

The bill introduced by Senator JAVITS is precise in its definition of circumstances and conditions when American Armed Forces can be introduced into hostilities. Section 3 of the war powers bill delineates by statute the implied emergency warmaking powers of the President. The further 30-day limitation on emergency actions taken under section 3 of the act reconciles the need for such actions in a day of instant communication with the necessity for congressional involvement in deciding great questions of war and peace.

It is important to note that this measure is not designed to tie a President's hands or slow our response to attack. The War Powers Act recognizes the need for quick response to attack. But it does not provide for the prolonged commitment of American forces without the approval of Congress.

In redressing a severe constitutional imbalance, the Congress is in a sense also stating publicly that it is ready to share the terrible burdens of committing a nation to war.

This power has gone unshared for too many years. The result has been the prolongation of a tragic and costly war, the embitterment of a generation, and severe strains on our constitutional system of democratic government.

The war powers bill offers the Congress an opportunity to restore the doctrine of shared power between coequal branches of Government.

The war powers bill offers the Congress an opportunity to prevent future American involvement in never-ending wars.

And, finally, the war powers offers the Congress an opportunity to stop the serious erosion of its own authority in a field vital to the health and security of our Nation.

Mr. FULBRIGHT. Mr. President, I call up amendment No. 387.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> On page 3, line 1, strike out through line 6 on page 4 and insert in lieu thereof the following:
>
> "SEC. 3. In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be employed by the President only—
>
> "(1) to respond to any act or situation that endangers the United States, its territories or possessions, or its citizens or nationals when the necessity to respond to such act or situation in his judgment constitutes a national emergency of such a nature as does not permit advance congressional authorization to employ such forces; or"
>
> On page 4, line 7, strike out "(4)" and insert in lieu thereof "(2)".
>
> On page 5, line 9, strike out "(4)" and insert in lieu thereof "(2)".

Mr. FULBRIGHT. Mr. President, before I make these remarks, I certainly want to reiterate my admiration and respect for the sponsors of this legislation. We have had excellent hearings, and they have produced some very useful information on one of the most important aspects of our Government. And the differences of view, as I have already stated, are related not to the objective of the legislation, but to some of the provisions that go to the means or, as the Senator from New York likes to call it, the methodology of this effort to bring a greater responsibility on the part of the Congress into the warmaking activities of our country.

Obviously we all know that grows out of the extreme tragedy and the extreme injury, the enormous injury, that has occurred to this country as a result of the happenings during the last 10 years.

Mr. President, although the intent of the bill is unexceptionable, it seems to me that the bill could be improved in several respects.

Mr. President, I must say that we discussed this and I offered a similar amendment in the committee. So, it is not a new attitude on my part.

The first problem lies with section 3, which catalogs the various conditions under which the President would be permitted to make emergency use of the Armed Forces. These conditions, in my view, go too far in the direction of Executive prerogative, especially in allowing the President to take action not only to "repel an armed attack"—with which we all agree, I think—but also to "forestall the direct and imminent threat of such an attack" on the United States or its Armed Forces abroad. The danger here is that these provisions could be construed as sanctioning a preemptive, or first strike, attack solely on the President's own judgment. Should the President initiate such a preemptive attack, the 30-day limitation provided for in sections 5 and 6 of the bill might prove to be ineffective, or indeed irrelevant, as a congressional check on the President—all the more for the fact that the 30-day limit on Presidential discretion is by no means absolute. The provisions authorizing the President to "forestall the direct and imminent threat" of an attack could also be used to justify actions such as the Cambodian intervention of 1970 and the Laos intervention of 1971, both of which were explained as being necessary to forestall attacks on American forces.

The emergency powers of the President spelled out in section 3 of the committee bill in their extensiveness may have the unintended effect of giving away more power than they withhold. The extension of the President's power to use the Armed Forces to "forestall" an attack before it takes place may well go beyond the President's constitutional authority. Under the Constitution strictly construed, besides a "sudden attack" on U.S. territory, the only other circumstances warranting unauthorized Presidential use of the Armed Forces are an attack on the Armed Forces of the United States stationed outside of the country and an imminent threat to the lives of American citizens abroad, the latter of which would justify only a brief military operation for purposes of evacuation.

The bill appears to me to deal more or less satisfactorily in paragraph (3) of section 3 with the matter of protecting the lives of Americans abroad; it goes too far in paragraphs (1) and (2), however, in allowing of discretionary Presidential action to "forestall the direct and imminent threat" of an attack on the territory or Armed Forces of the United States.

Rather than spell out what amounts to Presidential discretion to mount a preemptive attack, I am inclined toward a simple abbreviated provision allowing emergency use of the Armed Forces by the President. Alternately, there may be merit in simply abstaining from the attempt to codify the President's emergency powers, which is the approach of Congressman ZABLOCKI's bill, House Joint Resolution 542, adopted by the House of

Representatives on July 18 by a vote of 244 to 170. In practice, it is exceedingly difficult to draw up a list of emergency conditions for Presidential use of the Armed Forces which does not become so long and extensive a catalog as to constitute a de facto grant of expanded Presidential authority. The list of conditions spelled out in section 3 of the committee bill, is, in my opinion, about as precise and comprehensive a list as can be devised, and its purpose, I fully recognize, is not to expand Presidential power, but to restrict it to the categories listed. Nevertheless, I am apprehensive that the very comprehensiveness and precision of the contingencies listed in section 3 may be drawn upon by future Presidents to explain or justify military initiatives which would otherwise be difficult to explain or justify. A future President might, for instance, cite "secret" or "classified" data to justify almost any conceivable foreign military initiative as essential to "forestall the direct and imminent threat" of an attack on the United States or its Armed Forces abroad.

For these reasons I am much inclined either to say nothing about the President's emergency powers as in the House bill, or to include a simple substitute for paragraphs (1), (2), and (3) of section 3 of the committee bill, in which it would simply be recognized that the President, under certain emergency conditions, may find it absolutely essential to use the Armed Forces without or prior to congressional authorization. This approach too has its dangers as it would of irresponsible or extravagant interpretation, but at least it would place the burden of accountability squarely upon the President, where it belongs, and it would also of course be restricted by the 30-day limitation specified in sections 5 and 6 of the bill.

Mr. President, I wish to emphasize this particular point by saying that the matter is one of judgment on the psychology of a reasonable person. If we undertake in advance to specify the conditions under which the President can act, he can rationalize whatever the circumstances are to fit those designated conditions. He will then feel free to proceed as he sees fit and feel authorized in doing it. Without that, I think he would do one of two things: He would be extremely cautious, if it is at all doubtful, or he would consult Congress.

It is the collective judgment of the Congress and the President working together which I think our system regards as of fundamental importance, and it is that aspect of it which this and many other efforts we have engaged in seek to emphasize, that is, that it be a collective judgment. It is my own judgment of the psychology of the situation that the President, having these specifics in hand, would say, "Well, those are the conditions that exist" and proceed out of hand, either without reflecting fully himself upon the conditions, or without consulting Congress to any degree at all.

Under the language of paragraphs (1), (2), and (3) of section 3 of the bill the Executive could cite fairly specific authority for the widest possible range of military initiatives. Under the simpler, more general approach I propose, the President would remain free to act, but without the prop of specific authorization; he would have to act entirely on his own responsibility, with no advance assurance of congressional support. A prudent and conscientious President, under these circumstances, would hesitate to take action that he did not feel confident he could defend to the Congress. He would remain accountable to Congress for his action to a greater extent than he would if he had specific authorizing language to fall back upon. Congress, for its part, would retain its uncompromised right to pass judgment upon any military initiative taken without its advance approval.

This reminds me very much of the use that President Johnson made of the Tonkin Gulf resolution. He used to pull it out whenever anyone raised any question about it, and point to the language. He never did point out that he obtained that language by misrepresenting the facts in the case of Tonkin Gulf.

Confronted with the need to explain and win approval for any use of the Armed Forces on the specific merits of the case at hand, a wise President would think carefully before acting; he might even go so far as to consult with Members of Congress as well as with his personal advisers before committing the Armed Forces to emergency action. For these reasons, it appears to me that a general, unspecified authority for making emergency use of the Armed Forces, though superficially a broad grant of power, would in practice be more restrictive and inhibiting than the specific grants of emergency power spelled out in paragraphs (1), (2), and (3) of section 3 of the committee bill. Alternately—perhaps preferably—the same objective could be achieved by simply leaving out any attempt to codify the President's emergency powers, which is the approach of the House bill.

To deal with these difficulties I recommend the substitution of the following for the introductory clause and first three paragraphs of section 3 of the committee bill—page 3, line 1, through page 4, line 6:

SEC. 3. In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be employed by the President only—

(1) to respond to any act or situation that endangers the United States, its territories or possessions, or its citizens or nationals when the necessity to respond to such act or situation in his judgment constitutes a national emergency of such a nature as does not permit advance congressional authorization to employ such forces.

Another, related problem arises in connection with section 5 of the committee bill, which specifies a 30-day limitation for emergency use of the Armed Forces by the President. Under the committee bill, this limitation allows of an exception which might in practice prove to be a loophole so gaping as to nullify the 30-day limitation entirely.

The committee bill states that the emergency use of the Armed Forces by the President may be sustained beyond the 30-day period, with or without congressional authorization, if the President determines that unavoidable military necessity respecting the safety of the Armed Forces requires their continued use for purposes of bringing about a prompt disengagement from hostilities. In this connection, it will be recalled that President Nixon prolonged the Vietnam war for 4 years under the excuse of unavoidable military necessity respecting the safety of the Armed Forces. This escape clause could reduce to meaninglessness the entire provision limiting the President's emergency power to 30 days. The approach taken by the House bill is in this respect much superior inasmuch as it allows of no such escape clause. Section 4(b) of the bill passed by the House states simply that, within the 120-day emergency period specified in the House bill:

The President shall terminate any commitment and remove any enlargement of United States armed forces . . . unless the Congress enacts a declaration of war or a specific authorization for the use of United States Armed Forces.

Although I prefer the 30-day emergency period of the Senate Foreign Relations Committee's bill to the 120-day emergency period of the House bill, the latter, nonetheless, provides more effectively for congressional authority to decide whether or not any given military action may be continued beyond the emergency period.

Another, similar problem arises in connection with section 6 of the committee bill, under which Congress could require the termination of military action within the 30-day emergency period only by act or joint resolution, which of course would be subject to veto by the President.

In addition, section 6 of the committee bill, like section 5, makes a complete exception to the congressional termination power in any case where the President judges that "unavoidable military necessity respecting the safety of the Armed Forces" requires their continued use in the course of bringing about a prompt disengagement from hostilities. The requirement of Presidential signature for an act of termination, combined with the exception of unavoidable military necessity, reduce to meaninglessness the ostensible power to Congress to terminate hostilities within the 30-day emergency period. The approach taken by the House bill in this respect, as in the case of military action beyond the initial emergency period, seems much superior. Section 4(c) of the House bill would authorize Congress to require the Presdient to terminate military action within the emergency period simply by concurrent resolution. Since a concurrent resolution does not require the signature of the President, this approach would eliminate the possibility of Presidential veto of a congressional act of termination. Furthermore, in the matter of terminating military action within the emergency period as well as allowing it to continue beyond the emergency period, the House bill contains no such gaping escape hole as the unavoidable military necessity spelled out in sections 5 and 6 of the Senate committee bill. The House bill, there-

fore, provides not only for congressional authority to decide whether military action will be sustained beyond the emergency period; it also provides more effectively for congressional authority to terminate military action within the emergency period.

Mr. President, I have been very much troubled by the possible effect, of section 6, in which Congress seems to be saying or assuming that it does not already have the authority to legislate in these cases. It gives itself the power to legislate and then it takes away that power where the President has determined and certified to Congress in writing that there is an unavoidable military necessity respecting the safety of the Armed Forces.

This contemplates action so similar to that which has happened in Cambodia and Southeast Asia that it raises very serious problems in my mind. It seems to me that section 6 would delegate power to the President to prevent Congress from doing what it can now do, by act or joint resolution, to terminate hostilities.

I want to read, just for the record, to emphasize what I have in mind, section 6:

> The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act may be terminated prior to the thirty-day period specified in section 5 of this Act by an Act or joint resolution of Congress, engaged pursuant to section 3 (1) or 3(2) of this Act requires the continued use of such Armed Forces in the course of bringing about a prompt disengagement from such hostilities.

It seems to me quite clear we already have that power to terminate, without this bill. That is power which Congress already has, but under section 6 the President could take it away, by determining and certifying to Congress in writing that there is an unavoidable military necessity respecting the safety of the Armed Forces.

Mr. President, it has occurred to me, in reading this, that if this becomes law, then the actions which were taken with regard to the use of our forces in Cambodia—for example the Cooper-Church amendment—would be prohibited. In other words, this action would seem to me to abrogate a power that already belongs to Congress and which Congress has exercised.

To some extent, that power was exercised in the case of Cambodia, but it was not effective because there was a loophole with regard to the bombing; but insofar as the terms provided, it was effective. But article 6 would seem, now, to take away and to reduce the existing power of Congress by an act to terminate hostilities.

The Cooper-Church amendment was hailed at the time as a significant move on the part of Congress to reduce at least our exposure and a continuation of our activities in Cambodia. It did not exclude use of the bombers, although I think the subsequent use, and even the prior use—which we did not know about—went far beyond that contemplated by the language and intent of the Cooper-Church amendment

In any case, this bothers me very much. I would certainly hate to realize that this should be found to have removed from Congress one of the existing powers while we think we are trying to restrict the power of the President. It would certainly, indeed, be ironic if, instead of restricting the power of the President, we restricted the power of Congress to terminate hostilities once they had begun.

Mr. President, I yield the floor.

Mr. JAVITS. Mr. President, I yield myself, in opposition, as much time as I may require.

Mr. President, the distinguished chairman of the Committee on Foreign Relations made the same effort in 1972 when the bill was last considered, with one exception. At that time, he also had included in the same amendment some special provision respecting the use of nuclear weapons.

This consideration which we are asked to undertake now is only a new consideration in that that particular provision has been omitted. It was debated and defeated in the committee markup earlier this year.

The fundamental issue is this: Shall the Congress at the time that it delineates and fights for its own power, specify the parameters of its power in order to specify the parameters of the President's power? Or shall it not? The drafters of the bill came down on the side of delineating both in order to leave both certain rather than both uncertain. If we want to delineate a part of the whole, then we have to delineate the other part, and that is what we tried to do.

The amendment of the Senator from Arkansas goes precisely the other way and adopts what is really by implication the approval of the House bill. We approach it by acknowledging that a President has—as the Founding Fathers anticipated—the authority to repel sudden attacks. That was why the 1787 Constitutional Convention, in its final markup, changed the wording from "make war," which is the way it was first brought in in the Constitutional Convention, and as it was in the Articles of Confederation, to "declare war."

They said they wanted to leave the President the power to repel sudden attacks. They were very prescient, because the word "sudden" is critically important. "Sudden" is the essence of "emergency." And from this we have delineated and codified the emergency situations in updated, contemporary language and context.

So the question is, What is needed to repel an attack in point of time frame as well as force?

We can regulate the time frame. We have taken a period which seemed reasonable, 30 days, and said that is the time frame.

This, in order to be effective as a delineation of authority between the President and Congress, requires that we confirm him in his authority as well. There is, in my judgment, reliable authority for the way in which we have confirmed the President in his authority, and that is the testimony of Professor Bickel of Yale, one of the really outstanding experts in the field. He testified on this bill only a few months ago, on April 11, 1973.

This is what he said:

> A second question that is raised about the declaration of Presidential power in section 3 is whether it would not be better in any case to leave independent, exclusive Presidential powers unstated, so that in any instance of their exercise the responsibility will clearly be the President's alone, and so that no words have been put on paper, however carefully and precisely, which under any circumstances might be given a latitudinarian construction.

That is the very argument made by Senator FULBRIGHT in favor of his amendment.

Professor Bickel then goes on to say:

> The answer to this question that I find persuasive is that the actual draft of section 3 of S. 440 is precise and is, on any fair reading, not only a full implementation of the constitutional grant to the President, but also more restrictive than many a claim of power that has in past years been made by Presidents, and indeed acted upon.
>
> Moreover, as a matter of effective drafting, it seems to me impossible to state with any clarity what is reserved to Congress without stating first what belongs to the President. The task is one of linedrawing, of separating one thing from another, and in doing so one must state what is on both sides of the line.

This, it seems to me, is very authoritative support for the position I have taken.

Mr. President, the 30-day period, which ties into this specification of what constitutional powers the President practically has, takes cognizance of the living fact that an incident can become a war. Therefore, we give that spell of time in which the incident may perhaps cease and not become a war, in which case there would be no ground for congressional action. Where the incident is or is about to become a war, the War Powers Act becomes effective.

Second, we delineate the powers of the President for the purpose of making more clear the powers of Congress; and how they are to intermesh. You cannot delineate a part unless you delineate the other parts to encompass the whole. I think this is fundamental to this bill. We in Congress cannot assume that we are going to get off scot-free.

We must respect the President's power, while we use this opportunity to reestablish our own, and they are not a bit inconsistent. This is really what this bill is all about.

I regard the specification of the authority of the President to be a critically important element of the bill. Specificity is the very thing we have all been looking for. That is why we have been complaining that the "President's men," so-called, claim the moon and the stars for him. We have some truly extraordinary quotations. I will not delay the Senate with reading long quotations, but we have some truly long quotations of what the so-called President's men—to wit, the people who speak of the "strong" Presidency—have been claiming on the part of the President. They claim very illimitable, self-defined authority, especially respecting war and "national security."

Let me read just a few of them, so that the Senate may have an idea of the effort to bring into realistic focus the powers of the President. For example,

President Johnson said, in speaking of the Gulf of Tonkin resolution on August 18, 1967:

> We stated then, and we repeat now, we did not think the resolution was necessary to do what we did and what we're doing. But we thought it was desirable and we thought if we were going to ask them [Congress] to stay the whole route and if we expected them to be there on the landing we ought to ask them to be there on the takeoff.

The legal officer of the State Department, testifying in 1966, spoke as follows:

> There can be no question in present circumstances of the President's authority to commit U.S. forces to the defense of South Vietnam. The grant of authority to the President in Article II of the Constitution extends to the actions of the United States currently undertaken in Vietnam.

One final statement. Secretary Acheson really threw down the gauntlet to Congress when he testified in respect to President Truman's plan to station six divisions of U.S. troops in Europe. He said:

> Not only has the President the authority to use the Armed Forces in carrying out the broad foreign policy of the United States and implementing treaties, but it is equally clear that this authority may not be interfered with by the Congress in the exercise of powers which it has under the Constitution.

Mr. President, in view of these very broad claims of Presidential authority to commit us to war and to wage war, if we do not specify statutorily the President will make his own specifications tailored to his situation at the moment. This is just what has become intolerable.

I believe one thing is critically important. If we adopt this amendment, we are defying, it seems to me, the very purpose and intent of our reason for considering the war powers bill, and that is that there is no such thing as independent, absolute, discretionary authority in the President of the United States when it comes to war.

He has to join with Congress. We understand the exigencies and we provide for them, but essentially it provides he does not have a free-wheeling mandate, limited only by time; for the effect of the Fulbright amendment would be to give him absolute, free-wheeling, self-defined authority.

I have heard some words of the Senator from Arkansas (Mr. FULBRIGHT) which deeply disturbed me when I heard them, which carry out this philosophy, which says to the President, "You have 30 days to do what you want." The Constitution does not give that to him and neither does this bill. He has 30 days to defend the United States and its people in an emergency without statutory authorization. He does not have 30 days to do anything. That is not in the Constitution and it should not be the law.

I feel that the specificity we give him deals with the Constitution as conceived and written, with certain pragmatism in terms of the security of the country and at the same time there is a rationalization of power given the President with regard to war.

Finally, this will be a very important issue in the conference with the other body. The House approach is much more like the Fulbright approach. We think it is wrong and very inadequate to the occasion.

I think it would be most unwise for the Senate to give away a considered judgment which has gone through so much distillation and which most recently was passed by a vote of 68 to 16 in 1972.

Mr. President, I hope the amendment is rejected.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. I yield 3 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. EAGLETON. Mr. President, I shall be brief.

In his statement with respect to section 3 of the bill, the chairman of the Committee on Foreign Relations paid particular attention to section 3, subsections (1) and (2) relating to the President's authority to forestall an attack. And he also mentioned the rescue features of subparagraph (3).

I share some of his apprehension with respect to the forestall clauses. I did not include them in my original draft, but in the compromise bill it was included.

I think the thrust of the Senator from Arkansas' argument would be better directed if in some manner he would focus on the forestall clauses, which I agree may grant too much Presidential discretion. But I think his approach with respect to amendment No. 387 is instead a general articulation of Presidential authority as it is interpreted by the Executive today.

The Senator's other remarks go beyond the Fulbright amendment because the Fulbright amendment deals only with section 3 of the bill. The Senator went on to analyze and comment on sections 5 and 6, the 30-day authorization period sections, and he paid specific attention to the words "prompt disengagement."

This, too, is a troublesome passage of the bill. Last year when it was being debated between the Senator from New York, the Senator from Mississippi, and me, we tried to give a meaningful definition to "prompt disengagement."

What we had in mind in drafting the section was the protection of Armed Forces for the purpose of expeditious disengagement only. The President could not go off on a more expanded mission, or get into an offensive war.

Under that provision the troops are to promptly disengage and they are to be protected solely for the purpose of expeditious disengagement. I am a little vague on this but I had an exchange with the Senator from New York with respect to how long "prompt disengagement" might take. I asked if it could be as much as 3 or 4 years to promptly disengage, and he said "No," that "prompt disengagement" had in mind, by use of the word "prompt," that it could be a matter of weeks or months, but certainly not years.

I would be fearful, as would the Senator from Arkansas, if we codified by "prompt disengagement" some eternal, everlasting process by which troops could be withdrawn, almost one by one, from a theater such as Southeast Asia over a long period of time.

I wish to ask the Senator from New York a question. Will the Senator yield for a question?

Mr. JAVITS. Yes.

Mr. EAGLETON. I direct the attention of the Senator from New York to page 6 of the bill, section 5, line 22, where the words "prompt disengagement" appear. I wish to refresh the Senator's recollection, and correct me if I am wrong. We had a colloquy a year ago on the same subject and we discussed the meaning of "prompt disengagement." In the opinion of the Senator from New York, would "prompt disengagement" be so broad as to permit the withdrawal of troops over 3 or 4 years?

Mr. JAVITS. Not remotely. "Prompt disengagement" means as soon as the tactical security situation permits. Not even the strategic situation; the "tactical security situation." That is the good faith obligation of the President, which the bill seeks to import.

Mr. EAGLETON. We cannot pinpoint it to a clock or a calendar, but I take it the Senator means weeks or months and not a year or years.

Mr. JAVITS. I cannot conceive of that. It would be straining the imagination or credulity. Hopefully, it would never be more than days, or even hours. After all, we have exceptional logistical capabilities for withdrawal.

Mr. EAGLETON. I thank the Senator.

Mr. FULBRIGHT. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Arkansas has 10 minutes remaining on the amendment. The Senator from Maine has no time on the amendment.

Mr. FULBRIGHT. Mr. President, I will be willing to yield back my time after one or two very brief comments.

Mr. President, the Senator from New York is not present. I was only going to comment on one of the statements he made a moment ago. He did not address himself to my question about section 6, that Congress now, without any doubt, has the authority to pass an act or joint resolution restricting an ongoing war or activity. We just proved that in the case of Cambodia.

Section 6, it seems to me, restricts that by giving to the President the right to prevent congressional action by simply certifying the unavoidable necessity of using the Armed Forces, which he has done on several occasions.

I think that is unconstitutional. I do not believe that Congress can by law say that Congress would not have the right to pass an act within the realm of its own constitutional authority.

The Cooper-Church provision said that there should be no use of our forces in Cambodia. And here in section 6, it seems to me, it says that we cannot do that. I question its constitutionality. I do not think that Congress can deprive itself of the power to pass an act or to take any kind of Constitutional action.

The Senator from New York did not address himself to that. However, I real-

lize that there are certain differenences of view as to this approach. He likes the word "methodology." It is a difference of opinion. None of us know for sure.

The Senator from New York gives his view of what prompt disengagement means. Of course, if he were the President of the United States and we could count on it, I would agree with that.

"Prompt disengagement" from Indochina has been underway for 4 years. The President came into office and said he had a plan to end the war in Vietnam. It has been approximately 4 years. It is not really ended yet, although the major part has ended.

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

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Arkansas (putting the question).

The amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. GRIFFIN. Mr. President, I call up my Amendment No. 368.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment reads as follows:

Beginning with line 1 on page 2, stri' out through the end of the bill and insert in lieu thereof the following:

CONSULTATION

SEC. 2. It is the sense of the 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.

REPORTS TO CONGRESS

SEC. 3. In any case in which the President without a declaration of war by the Congress—

(1) commits United States Armed Forces to hostilities outside the territory of the United States, its possessions and territorities; or

(2) commits United States Armed Forces equipped for combat to the territory, airspace, or waters of a foreign nation, except for deployments which relate solely to supply, replacement, repair, or training of United States Armed Forces; or

(3) substantially enlarges United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit promptly to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating his action;

(B) the constitutional and legislative provisions under the authority of which he took such action;

(C) the estimated scope of activities;

(D) the estimated financial cost of such commitment or such enlargement of forces; and

(E) 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.

CONGRESSIONAL RESPONSIBILITY

SEC. 4. (a) Each report submitted pursuant to section 3 shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate, and each such report shall be printed as a document for each House.

(b) If Congress is not in session when the report is transmitted, the Speaker of the House of Representatives and the President pro tempore of the Senate shall convene their respective House of Congress to consider any such report of the President.

(c) Not later than five days after receiving any such report, unless a majority of such committee shall report out a bill or joint resolution approving the actions taken by the President, a bill or joint resolution prohibiting the expenditure of any funds, from such date as it considers appropriate, shall be reported with respect to such commitment or enlargement.

(d) (1) A bill or joint resolution reported under subsection (c) of this section shall be highly privileged in each House. It shall be in order at any time after the third day following the day on which such a bill or joint resolution is reported to move to proceed to its consideration (even though a previous motion to the same effect has been disagreed to). Such a motion to proceed to its consideration shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on such bill or joint resolution, and all amendments thereto, shall not exceed five consecutive calendar days, which shall be divided equally between those favoring and those opposing the bill or joint resolution. Once debate on such bill or joint resolution has begun, no other measure or matter may be considered by that House. A motion to recommit the bill or joint resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which the bill or joint resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of such a bill or joint resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a bill or joint resolution shall be decided without debate.

(e) If, prior to the passage by a first House of Congress of any such bill or joint resolution of that House, such House receives from the second House such a bill or joint resolution, then the following procedure applies:

(1) Such bill or joint resolution received from the second House shall be reported to the first House not later than three days after being received.

(2) On any vote on final passage of such a bill or joint resolution of the first House, such a bill or joint resolution of the second House shall be automatically substituted for the bill or joint resolution of the first House.

(f) If there are differences in such a bill or joint resolution between the Senate and House of Representatives, conferees on the part of the Senate and the House of Representatives shall be appointed not later than two days after the House of Congress passing the bill or joint resolution last passes such bill or joint resolution, unless within those two days both Houses of Congress agree upon the same total amount of outlays of the United States Government with respect to such fiscal year without the convening of a committee of conference. Upon appointment of conferees, the committee of conference shall meet immediately to resolve their differences. The provisions of subsection (d) shall be applicable with respect to the consideration of any report of a committee of conference on any bill or joint resolution.

(g) Subsections (b)–(f) of this section are enacted by the Congress—

(1) as an exercise of the rulemaking powers of the Senate and the House of Representatives, respectively, or of that House to which they specifically apply; and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SAFETY OF UNITED STATES ARMED FORCES

SEC. 5. The commitment of United States Armed Forces or the enlargement of those forces with respect to the actions of the President referred to in any report made under section 3 of this Act shall be continued or terminated only in accordance with law and the Constitution. However, no provision of law shall be construed as terminating any such commitment or enlargement when the President determines and certifies to Congress unavoidable military necessity respecting the safety of the United States Armed Forces requires the continued use of such Armed Forces for the purpose of bringing about a prompt disengagement of those forces.

Mr. GRIFFIN. Mr. President, last year, I reluctantly voted for a measure which was similar in many respect to the one before us now. I indicated then that I had serious reservations about its constitutionality, and I hoped that the House would make improvements in it.

Earlier this year I did not object when the Committee on Foreign Relations reported this measure for debate by the Senate. Despite my reservations and concerns, as a member of the Foreign Relations Committee, I believed then, I believe now, that this important measure—which is the product of long study and hard work by the distinguished Senator from New York (Mr. JAVITS)—and other Senators—deserves and is entitled to the consideration and debate which is being accorded it now by this body.

The decision to vote "no" on final passage is a very difficult one for me, particularly since I realize that my vote is likely to be misinterpreted in some quarters. I have concluded that I shall vote against this measure because I am concerned and convinced that enactment of this bill would lead to more wars, not fewer.

I recognize also that the position I take is not likely to prevail when the final vote is taken later today. But I am also convinced that this measure will not become law this year over the veto of the President—and that veto is certain.

Because that is so, I believe it can be useful in the course of this debate, not only to focus on the deficiencies in and objections to the pending bill, but also to point out that there are alternative constitutional routes that could be taken to achieve the essential purpose of S. 440

without tying the President's hands in advance.

The amendment I am suggesting now is put forth for educational purposes—and for future consideration—rather than for immediate action.

I want to demonstrate that there are other ways to go—constitutional ways. At the same time, I realize that this alternative is complex that it has been developed at a late date and that it should be the subject of hearings.

During the last few days, as printed copies of this amendment have been circulating among my colleagues, I have received a number of constructive suggestions which indicate that, while the thrust of the amendment is appropriate and correct—some details still need to be worked out.

Accordingly, I shall not press for a vote on this amendment today. But its very existence as an alternative for future consideration helps, I hope, to put my reasons for opposition to the pending bill in perspective.

Unfortunately, S. 440, before us now, would raise up serious doubts about the authority of the President in times of crisis. It would encourage unfortunate miscalculations on the part of potential enemies; it would seriously impair the conduct of our foreign relations, it would weaken our national defense and thereby it is likely to increase—not lessen—the dangers of war.

I wish to spell out some of the reasons for my doubts about the constitutionality of S. 440, and then I shall briefly explain the alternative route which I suggest. I am convinced that my amendment would accomplish the desired rejuvenation of Congress' role in the exercise of shared war powers while, at the same time, avoiding the constitutional pitfalls embodied in S. 440.

The report of the Committee on Foreign Relations with respect to S. 440, filed June 14, 1973, includes the following statement:

> The essential purpose of the bill, therefore, is to reconfirm and to define with precision the constitutional authority of Congress to exercise its constitutional war powers with respect to "undeclared" wars and the way in which this authority relates to the constitutional responsibilities of the President as Commander in Chief.

Last year, the committee's report in connection with the original bill, S. 2956, filed February 29, 1972, made this statement:

> The purpose of the war powers bill, as set forth in its statement of "purpose and policy," is to fulfill—not alter, amend, or adjust—the intent of the framers of the United States Constitution in order to insure that the collective judgment of both the Congress and the President will be brought to bear in decisions involving the introduction of the Armed Forces of the United States in hostilities or in situations where imminent involvement in hostilities is indicated by circumstances.

The earlier report at another point declared:

> The bill is in no way intended to encroach upon, alter or detract from the constitutional power of the President—

But despite these praiseworthy declarations, I am deeply concerned that the language and effect of S. 440 is to do exactly what the reports say it would not do: It does seek to alter the constitutional powers of the President. Leaving aside questions about the wisdom of such changes, the cold fact is that changes in constitutional powers cannot be accomplished except by amending the Constitution.

Section 5 of S. 440 declares that without prior approval of Congress the Armed Forces of the United States cannot be introduced by the President for more than 30 days, in hostilities, or, in any situation where "imminent involvement in hostilities" is indicated except in the four situations described in section 3.

Clearly, by this provision the proponents of this bill acknowledge that there are situations and times when the President is justified, and empowered under the Constitution, to commit U.S. Armed Forces to hostilities without prior congressional approval. Once that Presidential power is acknowledged, I am at a loss to understand how Congress by statute could constitutionally impose an arbitrary 30-day limitation on such Presidential authority.

Certainly, no arbitrary time limit is expressed in, or can be inferred from, the Constitution itself. The committee report admits that such a limitation is arbitrary. At page 28 of the 1973 report are found these words:

> The choice of thirty days, in a sense, is arbitrary.

Of course, Congress can set limitations and procedures with respect to its own actions, which my substitute amendment would do. But that is a totally different thing than seeking to fix by statute as limitation admitted to be arbitrary upon powers of the President which are derived from the Constitution.

The 1972 report, at page 6, declared:

> The intended effect of Section 5 is to impose a prior and unalterable restriction on the emergency use of the armed forces by the President.

It is clear, I think, that S. 440 seeks to impose: "A prior and unalterable restriction" on the President's constitutional powers.

In addition, I believe the specification in section 3 of only four situations in which the President can use the Armed Forces without prior approval is also an arbitrary restriction on his constitutional powers. How can we be so sure that there are not other situations, not now contemplated, when the President could exercise his constitutional power to employ troops. If there are such other situations, the Congress cannot limit or deny that constitutional power by a simple statute.

It cannot be emphasized too strongly that we have before us a bill—not a proposed constitutional amendment. Some may believe the policy embodied in the bill is wise; some may believe it unwise. But the fundamental issue is whether such legislation is consistent with the Constitution.

Because S. 440 would be unconstitutional, and because in any event, it will not become law over a certain Presidential veto, I believe a practical, constitutional alternative to S. 440 is needed and should be considered. It is for those reasons that I have developed my amendment.

S. 440 provides that the President, for a period of up to 30 days, can introduce U.S. Armed Forces in hostilities, or, in situations where imminent involvement in hostilities is clearly indicated only in response to an armed attack on U.S. territory or against U.S. forces abroad, or to a direct and imminent threat thereof or in the case of assisting Americans in certain cases.

This means that a President would be prohibited in the absence of prior approval by Congress from employing U.S. forces in situations where:

First, there is no armed attack on U.S. territory or U.S. forces, or direct and imminent threat thereof, and

Second, the situation is such that imminent involvement in hostilities could be clearly indicated by the circumstances.

This feature of the bill could have dangerous implications for American foreign policy, or for the safety of the United States, and for the prospects of peace in the world.

The modernization and expansion of Soviet military strength in Europe and the Mediterranean, together with increased Soviet deployment around the world, is a fact which cannot be ignored or avoided.

The United States cannot escape the fact that it, too, must have the ability to deploy forces in support of its foreign policy. The authority of the President to act in some situations not recognized by this bill can be absolutely essential to the maintenance of peace and to the prevention of war.

Let me be more specific.

If S. 440 had been the law in 1962, President Kennedy could not have deployed the U.S. fleet and imposed a quarantine, as he did at the time of the Cuban missile crisis. It will be recalled that at that time, there was no armed attack on the United States or its Armed Forces, nor any imminent threat thereof. But the act of stopping Soviet ships certainly did raise a risk of "imminent involvement in hostilities." If S. 440 had been in effect, President Kennedy's hands would have been tied. Those who say he could have gone to Congress and asked for authority are unrealistic. By the time Congress could have been called back into session to consider such a proposal, the international ball game would have been over.

Similarly, the reinforcement of our Berlin garrison at various critical times was not a response to armed attack or the imminent threat thereof. But actions taken by several Presidents with respect to Berlin have exposed our forces to the risk of "imminent involvement" in hostilities.

President Eisenhower sent troops to Lebanon at a critical point in time. His action was in the interest of peace—not war. There are times and situations when a requirement of prior approval by Congress would be self-defeating and impractical.

The ability of our President to act in

the interest of peace should not be placed under the shadow of doubt and uncertainty that would be created by S. 440.

President Johnson's strategic deployment in the Middle East of 6th Fleet vessels at the time of the Six Day War, coupled with his diplomatic contact with the Soviet Union to avoid miscalculations was a prompt and effective action taken not in the interest of war but in the interest of peace. His action was not in response to an attack upon the United States or our Armed Forces. But that move did expose our Armed Forces to the risk of "imminent involvement in hostilities" and, therefore, would have been prohibited under S. 440.

Some have argued that a Middle East resolution would confer Presidential authority to take such actions with respect to the Middle East. But it is my understanding that that resolution applies only if there is "armed aggression from any country controlled by international communism." Obviously, this provision does not cover some of the situations that could arise in the Middle East.

My point in recalling these examples is to underscore the fact that S. 440 is not a step toward reducing the chances of war. By tying the President's hands in very critical situations, this legislation could actually have the effect of increasing the likelihood of war—not peace.

I realize that the bill is well intentioned. But, unfortunately, it would raise up ambiguities and doubts in situations where the President's power to act should be clear and unqualified.

S. 440 is not only unconstitutional but it is unnecessary to a restoration of the appropriate congressional role.

It is not necessary to attempt to limit the Constitutional powers of the President—"to impose a prior unalterable restriction on emergency use of the Armed Forces by the President"—in order to insure that the Congress can speedily and promptly cut off funds for ventures which do not have the support of Congress.

All that is necessary—as was demonstrated when funds for bombing in Cambodia were cut off—is for Congress to act.

No time limit of 30 days need be imposed on the President's Constitutional powers. Aside from the fact that such a limitation would be unconstitutional, the period could be much too long in some situations—and too short in others.

The amendment I have suggested calls for consultation between the President and the Congress before troops are involved in armed conflict. And section 3 calls for prompt notification to the Congress if and when the President commits or substantially enlarges U.S. troops abroad. I believe that taking action to support the concept of consultation in time would be a wholesome and appropriate step—a step that would implement the intentions of the Founding Fathers, that would enable Congress to take action on the basis of up-to-date information.

My amendment then establishes an expedited procedure for Congress to consider the action of the President and to exercise its power of the purse with respect to the continued use of the Armed Forces in hostilities. Finally, provision is made in the amendment so that any cessation of funding of operations would not imperil the safety of the Armed Forces.

My amendment would not tie the hands of the President in advance. Rather it seeks to restore and make more effective the power which Congress already possesses under the Constitution.

In contrast to the pending bill, my amendment does not attempt to prejudge the circumstances in which our Armed Forces should be employed at some time in the future.

That question is left to the President and the Congress of the future to decide under the circumstances that then prevail. I believe that through this approach wiser decisions can be made than would be the case if we attempt, as S. 440 does, to foresee and anticipate future events now.

The approach of my amendment draws upon the recent experience of Congress when funds for Cambodia were cut off. It seems to me that if that experience proved anything it demonstrated that Congress has the power to act—but sometimes it lacks the will to act.

Such an attitude, it seems to me, calls for legislation—not to restrict the President—but to approve the procedures under which Congress can act, and particularly the Senate where filibusters are a serious obstacle to prompt action.

I shall not press my amendment, Mr. President, but I suggest and urge that the approach embodied in this amendment be seriously studied once it is made clear that S. 440 cannot become law.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn. The bill is open to further amendment.

Mr. JAVITS. Mr. President, does the Senator from Minnesota wish to speak now?

Mr. HUMPHREY. Yes, if someone will yield me time.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I yield 5 minutes to the Senator from Minnesota.

Mr. HUMPHREY. On the bill?

Mr. MUSKIE. On the bill.

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

Mr. HUMPHREY. I yield.

Mr. JAVITS. Let me say that I shall reply to the statement of the distinguished assistant minority leader at a later point, and I ask unanimous consent that my remarks may be printed in the RECORD at this point.

Mr. HUMPHREY. Mr. President, I think it would be appropriate that the Senator from New York reply now, and I shall await my time.

Mr. JAVITS. Mr. President, if I may have 5 minutes, I shall not take very long.

Mr. President, I reply, first, because the merits demand a reply, and second, because of my respect for the Senator from Michigan (Mr. GRIFFIN), who, if memory serves me correctly, was one of the cosponsors of our bill.

Mr. GRIFFIN. No.

Mr. JAVITS. No, I guess not. In any case, certainly his opinion is important. He probably bespeaks a good deal of what the administration is thinking. So I should like to reply.

One cannot expect that the bill we propose to pass is palatable to the President. It would not be to any President. Any President would be found to oppose it, to try to give himself all the powers he possibly can hang on to.

It may be remembered that President Nixon, in regard to the Cambodian situation, was precise on that score. He echoed the words of Winston Churchill when he said he was not there to be President in any way to reduce the powers of the presidency. That is what Churchill said about the British Empire. But, Mr. President, I believe that by doing what we are doing, we are avoiding the bait for President Nixon's idea, which is equivalent to what overtook the British Empire. In short, what we are trying to do is, at long last, to bring about an end to the guerrilla warfare between Congress and the President, in which Congress has been constantly bested, with such tremendous tragic cost to our country, before such a violent reaction developed as to really sweep away Presidential authority.

Mr. JOHNSTON. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. JOHNSTON. Would the Senator from New York explain to me, it seems that the purpose of the bill is to prevent the kind of situation we had in Vietnam, yet the language of the bill speaks of introducing our troops into hostilities. As I recall the situation in Vietnam, our troops were originally sent there to guard an Air Force base. We were there to guard that base. They in turn were attacked, as perhaps could have been predicted. That, in turn, would seem to me to trigger the other section of the law which would allow the President, then, to use the troops to repel an attack on those troops.

Is it not true that this would or would not prevent the kind of Vietnam situation which we have had?

Mr. JAVITS. It would prevent a Vietnam situation because the troops who went there to defend that Air Force base—even assuming that those facts are correct—but let us assume that, for the sake of the answer, although I think there is more to it than that—because President Johnson had decided on—the Senator may remember the high-level meetings he held with the President of Vietnam, I think it was either at Manila or Hawaii, in which it was decided that the Vietnamese forces would undertake essentially garrison duties and U.S. forces would fight the war.

But even if the Senator is right—and it is a hypothetical question—if we sent troops into hostilities, and there were hostilities in Vietnam, then this act would immediately apply. Certainly no President, even if there were an actual shooting that day, could deny that there was imminent danger of hostilities which, according to this, would apply.

So it is an a priori situation—to wit,

troops were there at all, whether to guard an Air Force base, which made this applicable and not the exemption contained in the section regarding Presidential powers.

Mr. JOHNSTON. Then the term "introducing hostilities" means introducing troops into the country if hostilities are taking place?

Mr. JAVITS. That is exactly right.

Mr. JOHNSTON. And where they are not employed initially for hostilities?

Mr. JAVITS. That is precisely right. I am obliged to the Senator for sharpening that point.

Mr. President, to continue, I should like to deal with the various items the Senator from Michigan (Mr. GRIFFIN) has in his amendment which he has now withdrawn, because it gives us the opportunity to show precisely how this applies.

I said a minute ago that no one will get off scot-free. We are confirming the President in constitutional authority, which is something that has never happened in the history of this country. That is good for him. We are also confirming ourselves in our authority. It is not one-sided at all. I hope that the President, who has been rather quick about vetoes, will think that over. He may not get another chance, nor may any other President. We may have a constitutional crisis, if the country gets sick and tired of a "President's war," even as Senator Goldwater says, by constitutional amendment. We have passed that before. We may again. We may have a Presidency which is truly emasculated and I do not want to see that, either.

The PRESIDING OFFICER (Mr. HELMS). The time of the Senator from New York has expired.

Mr. MUSKIE. Mr. President, I yield the Senator from New York as much time as he requires.

The PRESIDING OFFICER. The Senator from New York may proceed.

Mr. JAVITS. Mr. President, that is the framework, because this is very important.

Let us take the various instances. First, deployment regarding the Cuban missile crisis. The fact is that missiles were stationed in Cuba by the Soviet Union, essentially, and that, therefore, the President who would propose to stop their ships at sea would know he was in imminent danger of hostilities. So this bill would apply. And why should it not? In fact, the Soviet ships were not stopped by us. They stopped themselves. It is important to note that McGeorge Bundy, who is the closest living person to President Kennedy respecting this matter, has testified that the War Powers Act would not have hamstrung President Kennedy's successful diplomatic moves to resolve the Cuba missile crisis.

Now had the President come to Congress and said, "I need authority to stop those ships," we would have stopped those ships. That was risky business for hundred of millions of people around the world, with nuclear war in the offing; to leave it to one man in the White House—one man—to decide yea or nay. Fortunately we got out of it through diplomacy.

Mr. GRIFFIN. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. GRIFFIN. The Senator, I am glad, does concede that the effect of the bill would be to have made it impossible for President Kennedy to have acted in the Cuban missile crisis without getting prior approval of Congress.

Is not the Senator aware that Congress was not in session at that time?

Mr. JAVITS. This Senator is very well aware of that. Also, that Congress can be called into session in 10 hours. In addition, if I may remind my colleague from Michigan of some history, that crisis was brewing for several weeks. I was on television about it, as were many others, before the President made the decision as to what he would do, that is, that he would stop the Russian ships. We even had a resolution on the books given a lot of authority to the President. He had lots of time in which to deal with Congress. I do not want to be tied to this, but certainly he had a time lag. If he did not have a time lag and the danger was that imminent, he might—I repeat, he might have—in good faith, invoked that provision of this bill which said that if U.S. territory was in imminent danger of attack, that is covered by this bill, too. I would hope that the President would not do that, but, nonetheless, he perhaps could have, if it came to that.

Mr. GRIFFIN. I am interested in having this debate fully reflect the various points of view, so let me say that, as I recall it, President Kennedy made that decision rather late, after it was ascertained, I think by aerial observation, that the missiles were actually on the ships. Certainly we would not criticize him for not making the decision earlier. Once he made that decision, and the ships were on their way, it was too late to call back Congress or to get Congress to consider and pass some kind of resolution of approval before the missiles would have been in Cuba.

Now, to say that because the missiles were in Cuba would have authorized us, under the resolution, is to say that missiles anywhere in the world, or ICBM's for that matter, which are Russian based and which can reach the United States, would allow the same thing. I do not think that the Senator from New York would really mean that. So I point out that I think the effect of the bill would have been impractical and unrealistic in the Cuban missile crisis. President Kennedy's hands would have been tied and he would not have been able to act in the interests of peace, as he did.

Mr. JAVITS. I could not disagree more with the Senator from Michigan.

Mr. MUSKIE. Mr. President, will the Senator from New York yield for a moment?

Mr. JAVITS. I yield.

Mr. MUSKIE. The Senator, of course, is the author of the bill and the careful architect of its provisions. He understands what he intended by this legislation better than anyone else. But in response to the Senator from Michigan, let me make the point first—the historical point—that the President at that point did assemble the congressional leaders——

Mr. JAVITS. Of course he did.

Mr. MUSKIE. At the time he considered the decision. Second, the declaration of war at the time of Pearl Harbor was made within 2 days of the attack on Pearl Harbor. So Congress is capable of acting quickly. But then, let me emphasize a point the Senator from New York made a moment ago. The language of subsection (1) of section 3, which confirms the emergency authority of the Commander in Chief.

> To repel an armed attack upon the United States, its territories and possessions; to take necessary and appropriate retaliatory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack;

I remind both Senators that the implication from the pictures taken by our aircraft was to the effect that the installation of the missiles posed an imminent threat to the United States.

As the Senator from New York has said, I would hope that, given time, a President would still consult Congress. But one certainly could not challenge his good faith if he were to use that language in those circumstances to invoke the emergency powers.

Mr. JAVITS. The Senator has answered the question exactly as I would, and I wish to add one other point.

No one denies for a minute that you still depend to a great extent upon the Presidency. As to all the loose talk about credibility, and so forth, we all can appreciate and understand that, but you cannot run a country that way. You cannot operate; you cannot pass laws on that theory.

We must assume that, having written it out, the President will obey the law in reasonable good faith. In any case, we will have something to repair to.

I believe that the answer to the Cuban missile crisis is that, given any time at all, the President would have seen his clear duty under this bill to come to us. What gives him the prescience and patriotism that is denied to us? I do not understand it. He is human and mortal, as we are. If you had any doubt about it yesterday, you should not have it today. What is the basis for the assumption that he is infallible and cannot make a mistake and that only we are capable of mistakes?

So much for the Cuban missile crisis.

As to the relief of the Berlin garrison, there was no imminent threat of war. The Senator, himself, said that. We just defeated an amendment by the Senator from Arkansas (Mr. FULBRIGHT) which would have inhibited the deployment of our forces. So the President is perfectly free to deploy the forces of the United States. That covers the Berlin garrison problem.

As to the situation of the troops to Lebanon, there, again, the President should have come to us; and, in fact, he did. He got a resolution which in the terms of that time was valid: if they are attacked by Communist forces or Communist-backed forces.

That was his cover for asking for the resolution, on the ground that the revolt

in Lebanon was fomented by the Soviet Union or forces acting at the dictates of their international Communist apparatus. But precisely this law would apply and should apply in that kind of situation. That could have led to an enormous conflagration in the Middle East exactly like that in Vietnam. We are mighty lucky that we got out of it with a whole skin. Certainly, we want this to apply to that kind of situation, and it should.

Finally, as to the deployment of the 6th Fleet in the 6-day war, the answer is precisely the same as that respecting the deployment in respect of the Berlin garrison. The President moved our ships forward in a situation which represented the normal deployment for naval forces of the United States. There was no imminent danger.

Nobody was threatening to attack. They were not involved in hostilities. And the President had complete authority to do that. Had he moved them within the war zone, with a design of taking some part or relieving one or the other of the parties, then he would be subject to this law, and I maintain that he should be. That is why we are doing it.

I understand the views of the Senator from Michigan, and these are appropriate questions to raise and to be debated. But I really feel that the plan of the bill meets the appropriate exigencies. Where we ought to have power, we are given power; and where the President ought to have power, he is given power.

I thought these views should be juxtaposed to those of the Senator from Michigan, and I thank the Senator from Maine.

Mr. MUSKIE. Mr. President, I yield 5 minutes to the distinguished Senator from Minnesota.

Mr. HUMPHREY. Mr. President, earlier today I made a statement and placed in the RECORD a statement in full support of this very important, historic piece of legislation.

I particularly wish to compliment the Senator from New York for his initiative in this area of constitutional law—that is what it is—and the distinguished Senator from Maine for managing this bill on the floor of the Senate and for his intimate knowledge of its details.

The report of June 14, 1973, which has been published on the War Powers Act, as it is known, is possibly one of the most precise and informative documents relating to the relationships between the President and Congress, as pertains to warmaking powers and the authority that each branch of Government has, that has ever been published. We are indebted to the Senate Foreign Relations Committee, the sponsors of this bill, and the staff of that committee for a truly remarkable report. The report contains these words:

> It is legislation essential to our security and well being. It is legislation in the interest of the President as well as the Congress. . . . We live in an age of undeclared war, which has meant Presidential war. Prolonged engagement in undeclared, Presidential war has created a most dangerous imbalance in our Constitutional system of checks and balances. . . . [The bill] is rooted in the words and the spirit of the Constitution. It uses the clause of Article I, Section 8 to restore the balance which has been upset by the historical disenthronement of that power over war which the framers of the Constitution regarded as the keystone of the whole Article of Congressional power—the exclusive authority of Congress to "declare war"; the power to change the nation from a state of peace to a state of war.

Those are the words of the distinguished Senator from New York, and I think they summarize very properly and succinctly what this bill is all about.

I believe that this debate has been truly a course of instruction in the very heart of constitutional government, the relationships between the President and Congress. On the issue of life or death, peace or war, nothing could be more fundamental.

Whether this bill is what it ought to be or not, it is a beginning. It represents an intelligent, instructive effort on the part of Congress to work out the relationships between the Presidency and Congress on the entire subject of national security, particularly as it relates to the use of the Armed Forces of the United States, and under what terms and conditions.

So I would hope, as the Senator from New York has said, that the President would not be too hasty in proclaiming that it will be vetoed. I would urge upon the President that he study the background of this legislation as the testimony before the Foreign Relations Committee was given. I would urge upon the President and his advisers that they read the report on this bill, as filed by the Committee on Foreign Relations. I urge upon the President that we learn the lessons of the second half of the 20th century—namely, that power begets power, that action begets action, and that Presidential power exercised is building precedent upon precedent, and there comes a time when you have to take a look once again and attempt to restore the balance upon which this constitutional system is predicated.

SUBMISSION OF SENATE RESOLUTION 149

Mr. HUMPHREY. Mr. President, one of the best ways to prevent a war is to have communication between the respective nation-states. I am today submitting a resolution which will place the Senate on record as favoring a return to normal relations between the United States and an old historic friend—namely, Sweden—and the means to do this would be the normal exchange of ambassadors.

Since August 1972, almost a full year, we have had no diplomatic relationship with Sweden, a friendly nation, a nation of democratic purpose and democratic institutions, a nation of people who have a great and fierce sense of individuality, and the love of freedom and liberty. Yet the President of the United States has seen fit to break off diplomatic relations and inform the Swedish Government that an ambassador from Sweden would not be welcome here and, of course, not to send an American ambassador there. Why? Because the present Prime Minister of Sweden made some derogatory remarks about our country in 1972 when the bombing was taking place over Vietnam. But he did not say anything that had not been said by Senators, Representatives, or distinguished citizens of this country who disagreed with the President's action.

What the Swedish Prime Minister said was not nearly what had been said from Peking or Moscow. They had conducted a diatribe against this country for years. Yet we reach out to Moscow and Peking and we call them long lost brothers. It is the new diplomacy.

I think countries are entitled to express their points of view, but if the reason we broke relations with Sweden is because we did not like what their Prime Minister said in 1972, I want to know what we are doing in our new détente and spirit of understanding with the Peoples Republic of China and the Soviet Union. The situation does not make sense.

All I am doing here is to ask the President of the United States to restore the relations with the country that is a bridge between the North Atlantic Pact on the one hand and the Soviet Union on the other hand, a country that is a friendly country, which has its sons and daughters by the millions in this country, a country that has elections, a country that believes in civil liberty. I am asking that the President of the United States "get with it" and send an ambassador there and say to the Prime Minister of Sweden that we are prepared to act like mature people; that we are done with this infantile petulance, and it is time we cut it out.

We do not have an ambassador in Moscow. It might not be a bad idea to have one there. I urge on the President of the United States that in the name of diplomacy for peace, for which I commend him, and repeatedly praise him, that he take the steps now to heal some of these wounds in the case of Sweden and because of the importance of relationship with the Soviet Union, that an ambassador be sent there.

Mr. President, this is one of the ways to preserve peace and this fits within the confines of this debate.

Mr. President, the resolution would place the Senate on record as favoring a return to normal relations between the United States and Sweden. The means to do this would be a normal exchange of ambassadors.

At present, there is no American ambassador in Stockholm. Our Ambassador left his post in August of 1972. The administration has not nominated another ambassador for this post, leaving it vacant for almost a year.

The Swedish ambassador left Washington in January 1973. I understand that the administration has made it known to the Swedish Government that it will not welcome his successor. The gentleman who was planning to become the Swedish ambassador to Washington has been given another post by his government.

Mr. President, what appears to be a childish rift between two nations has serious implications for U.S. foreign policy.

It is a matter of great concern to me

and others who feel that the United States has absolutely no right to penalize a nation in this fashion, because its national leadership expresses views which may not be in accord with our own.

The Nixon administration has chosen to attempt to embarrass the Swedish Government by not sending an ambassador to Stockholm. We have also rebuffed any attempts made by the Swedes to normalize relations.

The behavior of the Nixon administration concerning this matter is in direct violation with a Senate resolution passed in September 1969, specifying that diplomatic relations do not depend upon or imply approval views of the governments concerned.

This principle was the guiding force in the 1930's when Franklin Roosevelt recognized the Soviet Union. And this sentiment certainly was in evidence when Mr. Nixon and Mr. Kissinger arranged for a mutual exchange of diplomats with the People's Republic of China.

It is interesting that we choose to penalize the Swedish Government for expressing views critical of our involvement in the war in Indochina and do not bat an eyelash when far more critical and more numerous statements are made by the Soviet Union and the Peoples Republic of China. Of course, I do not believe we should diplomatically penalize any country for statements it made which faithfully reflect the views of large numbers of its people.

We cannot avoid the fact that our policies in Indochina have deeply disturbed large numbers of Scandinavians and Europeans. When Prime Minister Palme was critical of the American bombing of Hanoi in December 1972 his remarks were not aimed personally at the President or any other Americans. While they may have been exaggerated and I personally take exception to them. However, the essence of his frustration, outrage, and disagreement with our policies was shared by many Americans.

Mr. Palme, like all Americans, has a right to express his views without having to experience retribution of any sort.

I have no doubt that Swedish-American relations strengthened by bonds of friendship and kinship will long outlive the present infantile petulance.

However, the principle involved here is how the United States relates to the smaller democratic nations of the world.

Why have we paid so little attention to the ugly tirades of great socialist powers and react so unfairly to criticism of our policies by a small democracy?

Why do we seek to punish diplomatically and embarrass a country which has been our friend for so many years?

During the month of April in a letter, I called upon the President to give this matter his personal attention and remedy this deplorable situation. There has been no response from the White House or from the Department of State.

Apparently, the exchange of views that we so cherish with the People's Republic of China and the Soviet Union is not desired in the case of Sweden.

All Americans—and especially those of Swedish descent—must realize how unfair and untenable our position is.

It is my hope that the Senate Resolution I introduce today will bring to the attention of the President and the State Department the need to nominate with all due haste an ambassador to Sweden.

The time has come to normalize our relations with Sweden and not let the past interfere with the necessary exchange of views so badly needed for future good relations.

Mr. TOWER. Mr. President, I call up my amendment No. 386 and ask that it be stated. It is my understanding that the amendment is out of order, but I was under the impression that the point of order could not be raised until after the time on the amendment had expired or had been yielded back.

Mr. MUSKIE. I am happy to yield time to the Senator.

The PRESIDING OFFICER. The Chair is advised that the amendment is out of order.

Mr. TOWER. I withdraw the amendment for the moment.

Mr. MUSKIE. I am happy to yield to the Senator.

Mr. TOWER. Will the Senator yield to me for 15 minutes?

Mr. MUSKIE. I yield 15 minutes to the Senator from Texas on the bill.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, the amendment in question is out of order because it is an amendment to the title of the bill and, therefore, cannot be called up until after the bill is passed.

I will read the amendment. It states:

Amend the title so as to read: "A bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress, and thereby reduce the United States of America to the status of a second rate power."

I know on the face of it that it appears to be a frivolous and facetious amendment, but I offer it not in levity because to me it really says what we are doing here, because it underscores what I conceive to be the impact of this legislation if it is passed and if it is signed by the President or his veto is overridden.

Mr. President, what is proposed in S. 440 is to reduce the United States to a state of impotence in this negotiation with the large superpowers of this world because it imposes a paralysis of military action on the President of the United States. Anyone knows that to negotiate successfully with a superpower, the Soviet Union, you must not only be in possession of great military power, but also you must have the flexibility and the willingness to use it, if necessary.

What this bill does is to proscribe the Chief Executive in this country in a way that no other head of state in a large country in the world is proscribed. They must be laughing themselves silly in the Kremlin over our consideration of this legislation.

Much has been made of the research and constitutional prerogatives of the Presidency of the United States. It seems to me we are trying to do it not only at the expense of the constitutional prerogatives of the President, but also at the expense of the continuance of a tradition in our governmental system, a tradition which has allowed the President freedom of movement in the conduct of diplomacy.

Mr. President, I do not think a better case could be stated against the adoption of the war powers bill than was stated by Mr. Justice Sutherland in the case of *United States* v. *Curtiss-Wright Export Corporation*, 299 U.S. 304, 1936. Here is what he said:

It will contribute to the elucidation of the question if we first consider the differences between the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs. That there was differences between them, and that these differences are fundamental, may not be doubted.

The two classes of powers are different, both in respect of their origin and their nature. The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. . . . The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the federal government as necessary concomitants of nationality. Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens (see American Banana Co. v. United Fruit Co., 213 U.S. 347, 356); and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. . . .

Not only, as we have shown, as the federal power over external affairs in origin and essential character different from that over internal affairs, but participation in the exercise of the power is significantly limited. In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation. He *makes* treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. As Marshall said in his great argument of March 7, 1800, in the House of Representatives "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." Annals, 6th Cong., col. 613.

That was a man speaking within the same time frame that the Constitution was conceived, framed, and adopted. If we want to talk about the intent of the framers, let us repair to some men who were present in that era and who were commenting on the Constitution at that time.

Justice Sutherland further said:

It is quite apparent that if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. . . . [B]oth upon principle and in accordance with precedent, we conclude there is sufficient warrant for the broad discretion vested in the President to determine

whether the enforcement of the statute will have a beneficial effect upon the re-establishment of peace in the affected countries.

The opinion goes on to matters that are not necessarily relevant to this debate.

Mr. President, it occurs to me that what we are doing here flies in the teeth of tradition, custom, and usage. In a horse-and-buggy era, this kind of legislation conceivably could have had its place, but not today, not at a time when we have the Middle East crisis, the Lebanese crisis, the Dominican crisis, the Cuban crisis. This is no time for us to fly into the teeth of tradition and constitutional uses.

I have no thought that this bill will be rejected, but I think that those of us who can see the inherent evil in this measure would have been remiss had we not talked about it. Should this bill become law, the United States from this point will be disregarded as a great power with influence over the course of world events.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I yield the Senator from South Carolina 10 minutes.

Mr. THURMOND. Mr. President, I rise in opposition to the pending bill, S. 440, on the grounds that it is unnecessarily restrictive on the President and may well lead to new problems rather than correct present problems.

Under this bill the President of the United States could take emergency military action—in the absence of a congressional declaration of war—in only four cases:

First. To repel an attack on the United States, or forestall the "direct and imminent threat of such attack";

Second. To repel or forestall an attack on U.S. Armed Forces stationed outside the United States;

Third. To protect U.S. citizens and nations in danger in foreign countries; or

Fourth. Pursuant to some specific statutory authorization short of declaration of war.

The bill further provides that when the President does take emergency action, such action must cease within 30 days unless Congress authorizes continuation of use of the Armed Forces.

Mr. President, in my view this measure fails to meet the objectives of restoring to Congress its power to declare war without at the same time tying the President's hand in emergencies. S. 440 is simply too restrictive of the President's power to act in emergencies. For instance, the bill does not contain any specific provision for the President to use his own judgment and discretion to determine what is an "emergency" sufficient to justify action on which he can base a deployment of our Armed Forces without congressional assent.

The legislation provides only four situations in which an immediate response is allowed, and it may well be questioned whether it is possible to define and describe in advance all possible potential emergency situations to which the President might be called on to respond.

By restricting the President's authority to act to these four specific categories, Congress would tie a future President's hand when some unforeseen crisis arose. It should also be pointed out that some constitutional law experts maintain that the independent authority of the President under the Constitution is substantially broader than the four categories specified in the bill. Therefore, to limit the President's power to these categories may raise the point of constitutionality.

In addition, the question has been raised as to whether this bill would cover such emergency situations as the action taken by President Truman in Korea. In the absence of a declaration of war, the act would prohibit collective action against a sudden armed attack on a nation to which we have no formal national commitments. Thus, if President Truman had been operating under the proposed act a prior declaration of war would have been required before engaging our forces in the Korean war.

This bill also raises the question of whether we could go to the aid of Israel in case of an attack on that country since we have no defense treaty with Israel.

The potential for great power intervention in the Middle East is clearly illustrated by the burgeoning Soviet naval presence in the Mediterranean, Persian Gulf, and Indian Ocean and the presence of Soviet military personnel and sophisticated military equipment in several Mideast countries.

This bill specifically limits the use of U.S. forces to situations where the United States or U.S. forces are attacked or directly and imminently threatened with attack. In the Six-Day War of 1967, for example, the United States itself was not directly threatened with attack nor was there an immediate threat to American forces. However, there was an open and imminent threat made by Russia against Israel. President Johnson's prompt response by moving the 6th Fleet into the danger area in order to forestall Russian pressure on Israel would have been prohibited under S. 440 because no threat had been made against U.S. forces.

Other situations not covered in the four points are sudden attacks on areas which the Nation is committed by treaty to defend—but not by specific authorizing legislation—regional peacekeeping operations, and humanitarian interventions.

Mr. President, the 30-day limitation on Presidential emergency action is another area viewed as excessively restrictive of the President's power. There are those who feel that under the Constitution the President, as Commander in Chief, has the authority to defend the territory of the United States with all resources at his command for whatever period is required. Thus a statute setting a time limit on the President's authority to act to an exact term, as 30 days, may raise grave constitutional questions.

Several other adverse effects may flow from the 30-day provision under which the President's emergency action would be terminated unless continued by Congress.

It could force Congress into a premature decision or end Presidential action before a full assessment could be made of the situation. It might increase pressure to escalate hostilities in order to achieve the objective within this limited time frame. It may precipitate a premature withdrawal of troops and cause more dislocations or possibly endanger their lives.

Finally, it is possible that if for some reason Congress were not able to act within 30 days, the President would be obliged to do whatever he thought best, again raising the constitutional issue at a time of crisis when the Nation could least afford it.

Mr. President, before closing I would like to point out that the Congress has always had the power to shut off funding for any military operation the Commander in Chief might undertake.

In forming our government, Congress was given the authority to declare war and, of course, Congress holds the purse strings to finance the cost of any war.

Therefore, the Congress has considerable authority in this area and I see no reason for new legislation which would limit the President's ability to meet emergency situations.

For this reason and the others mentioned earlier in these remarks I intend to oppose this bill.

If the Congress does pass this bill, I hope the President will see fit to veto it.

Mr. EAGLETON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

On page 9, line 5, beginning with "but", strike out through "Act" the first time it appears in line 7.

Mr. EAGLETON. Mr. President, in brief my amendment would strike almost all of the sentence describing the effective date of S. 440 in section 9. Section 9, when originally added to the bill was a viable section, because then we were operating in the context of a continuing war being experienced in Southeast Asia. However, since the introduction of the bill this year and since the hearings on it in the Senate Committee on Foreign Relations and finally its consideration now on the floor of the Senate, we have had intervening events, which, in my opinion, make the continuation of section 9 an anachronism. Among those events has been the withdrawal of troops from Southeast Asia, and more recently the so-called Cambodian compromise by which August 15 was set as the final date for the cessation of all American military participation in Southeast Asia.

The purpose of my amendment is simply to strike out those anachronistic parts which are no longer effective and to assure that the provisions of S. 440 go into effect immediately on the date of enactment.

In addition, this would incorporate in S. 440 identical language to that appearing in the House bill on war powers.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I yield myself such time as I may require. I shall be very brief.

The amendment has been under con-

sideration by the Senator from New York (Mr. JAVITS), the Senator from Mississippi (Mr. STENNIS), and me. Developments since the bill was approved by the committee do create something of a problem.

The provision now in the bill has apparently been covered by the so-called Cambodian compromise adopted a couple of weeks ago. Still, we have not arrived at the date of August 15. But in anticipation of the termination of all U.S. military activities in Indochina by that date, the Senator from Mississippi (Mr. STENNIS), the Senator from New York (Mr. JAVITS), and I are willing to accept the amendment.

Mr. President, at this time I yield to the Senator from New York to discuss the matter more fully with the Senator from Missouri.

Mr. JAVITS. Mr. President, the amendment of the Senator from Missouri has given me very great concern, primarily because we must all remember that this is a bill, as I said when we opened the debate, that has gone through an unbelievable examination.

We have always felt and have consistently made the point that there is no retroactive intent in connection with the bill. We would not provide for retroactivity if we adopted the amendment. The bill would say that it would actually take effect on the date of its enactment. Nevertheless, we thought that there had to be no argument about the hostilities in Vietnam. The Senator from Mississippi (Mr. STENNIS) was very strongly of that view.

We felt the same way when the bill went through the committee about the hostilities in Cambodia. Again, notwithstanding the deep objections we had—which goes for the Senator from Missouri and myself and a great majority of the committee with respect to Cambodia—we still did not wish to bring this bill into that kind of retroactivity.

We do now face a different situation, as has properly been argued. We have adopted the so-called continuing resolution with a cutoff date, and we have a right to assume that will represent an end of everything related to the war in Indochina. So, one could say, as the Senator from Missouri has undoubtedly made clear—although I was not present in the Chamber at that particular instance—that this retroactivity clause he seeks to strike is moot. On the other hand, I am sure that it will take some months for the bill to become law. And, without any question, no one ever knows what may occur.

Also there are rumors, and Washington is always full of them, that the President may seek an extension of the August 15 date.

I rather sense that is another reason that the Senator from Missouri is anxious for his amendment, to serve notice that this will not be very kindly received around here. I think that I would be very much in accord with that notice myself.

I would like, before I agree, to make one further appeal to the Senator from Missouri.

We will take the amendment if he wants us to take it. However, I would like to lay one fact before him. The House has stricken the provision, and if we strike it out of here, we will have nothing to confer about on that matter.

In view of the fact that the House struck the section out of House Joint Resolution 542 on the floor, we would have nothing to confer about and nothing to do in conference with this particular question if in the next 30 days or 60 days some new situation should develop. That is the disadvantage. However, I cannot use that disadvantage as a decisive argument against the amendment.

I can only say to the Senator from Missouri that the Senator from Mississippi (Mr. STENNIS) most reluctantly and I most reluctantly and the Senator from Maine (Mr. MUSKIE) most reluctantly will take the amendment, but we would still commend to his consideration the fact that it would be strictly a matter in conference and that we should leave ourselves room for maneuvering in so delicate a situation.

If the Senator feels absolutely decided on this, we will agree to accept the amendment.

Mr. EAGLETON. Mr. President, without any degree of reluctance I say to the Senator from New York that it is anachronistic. It stands for nothing in the context of today's situation. I would like to go forward with the amendment.

Mr. JAVITS. Mr. President, if the Senator will yield for another question, it is our understanding that the only reason for striking this clause is the fact that precisely the question sought to be dealt with by this clause has been dealt with by the so-called Cambodian compromise in the continuing resolution, the date being August 15.

Mr. EAGLETON. The Senator is correct.

Mr. JAVITS. Mr. President, under those circumstances, I have no objection to the amendment.

The PRESIDING OFFICER. Who yields time?

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

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

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Missouri.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. JAVITS. Mr. President, before we go to third reading, may I have 1 minute.

I do not know of other amendments, except one that might possibly be offered.

I beg the deputy minority leader—because we want to be very understanding about this bill—to advise me on the subject.

The Senator from Colorado (Mr. DOMINICK) gave us notice that he was going to offer an amendment, No. 375, and we are about to shut off the consideration of any further amendments.

So, under those circumstances, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, will the Senator from Maine yield 5 minutes to the Senator from New Mexico?

Mr. MUSKIE. Yes, I yield 5 minutes to the Senator from New Mexico. Then I shall yield 2 minutes to the Senator from Florida.

Mr. DOMENICI. Mr. President, I do not believe I shall take the full 5 minutes. As Senators know, I came off a campaign recently. I was in a campaign at the height of the Vietnamese war, and during my campaign for this office last fall, I told my fellow New Mexicans that I pledged my support for those measures which would insure an end to this country's involvement in Vietnam. I have, I believe, lived up to that commitment. I also said that I supported the so-called Stennis War Powers Act. I am doing that today.

The Vietnam war divided our country. Families were divided; friendships were strained over differences in opinion. The war was not an "American war" because in a real way Congress had not declared it such as they did at the time of the First and Second World Wars.

Mr. President, I feel that this measure, despite its imperfections, comes closest to supporting the philosophy shared by this country's founders. It was their feeling that the decision to declare war was so awesome that the President needed the advice of the people's representatives. They learned this lesson studying the causes and effects of "older" Government's past decisions.

I agree with their philosophy. The judgment and responsibility for the decision to wage war have to be shared by the people through their elected representatives. We have again learned that lesson by our involvement in Vietnam. God forbid that we should ever have another war of aggression, but if ever such should occur, it should not be "Kennedy's war" or "Johnson's war" or "Nixon's war" but rather an "American involvement."

We have learned the hard way that when the American people through their elected Representatives do not share in a decision to go to war, they do not bring to it their full support and sense of personal obligation. The spirit of patriotism is absent. The principle established by the war powers bill is that this country should not be committed to war without the sanction of the American people through their elected representation.

This bill is constitutionally sound. It would leave the President ample room for emergency military action should the country's security be threatened. I would not support a limiting bill in that regard. The emergency provisions incorporated in the measure permit the President to take a wide variety of actions in defense of the Nation or its citizens and forces stationed abroad. Thirty days

seem to be sufficient time for Congress to decide any Presidential action on its merits—to decide if the action was necessary and if it should be continued.

In addition, this measure would insure that the American people could come together in debate to decide if they should fully commit themselves to disengage our military forces for any activity they disagree with. This principle also seems paramount in the Constitution and necessary for a democracy.

I have also been most concerned that the bill would permit the President wide latitude for foreign policy actions. I do not see any curtailment in that area incorporated in this legislation.

The act provides no panacea, but I believe that it can insure that the collective wisdom of the President and the Congress will be brought to bear, as the Constitution provides, when the all-important questions of war and peace are considered.

Justice Joseph Story in 1933 once remarked—

It should be difficult in a republic to declare war; but not to make peace.

I believe this measure will leave the President sufficient flexibility to negotiate, to freely participate in foreign affairs. At the same time, Congress will once again assume their proper role of advise and consent. This idea represents democracy. This idea is the premise I support.

Mr. JAVITS. Mr. President, I want to thank the Senator from New Mexico very much, not only for his fine contribution, but also for the deep sincerity with which he has made his speech.

Mr. MUSKIE. Mr. President, I, too, thank the distinguished Senator from New Mexico, and I commend him for keeping his campaign promises.

Mr. President, I now yield 3 minutes to the distinguished Senator from Florida.

Mr. CHILES. Mr. President, I look forward to the opportunity to cast my vote in favor of the War Powers Act. I congratulate the sponsors of the act.

I voted for the War Powers Act at the last session of Congress, and I feel that the vote I cast then and the vote I shall cast today are perhaps the two most important votes I have cast since coming to the Senate.

We have just recently engaged in two Presidential wars, in neither of which did Congress fulfill its responsibility to carry out its constitutional role.

I think we should clearly realize that we have before us a bill that is not directed at the President by limiting the power of the President; it is directed at Congress. It is necessary because Congress has failed to carry out its constitutional duties. There is nothing we can do by statute to limit the constitutional authority of the President. This bill requires Congress to carry out its constitutional duties. It seems that we have failed to do that.

Hopefully, by passing a statute relating to ourselves, we can require those who sit here today and those who will sit here in future days to carry out our constitutional duties. That is actually what we are getting at.

If war should ever come again—God forbid that it should—at least we will go into it knowing that it will have been a decision that is in the national interests of the country, that there has been a national debate, and that there is a chance to be heard, under the republican form of government that has been set up.

For these reasons, I look forward to casting my vote in favor of the bill, and I look forward with great hope that this great bill will become law this year.

Mr. JAVITS. Mr. President, I have been advised by the deputy minority leader that the amendment I had in mind will not be offered.

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

The bill (S. 440) was ordered to be engrossed for a third reading and was read the third time.

Mr. ROTH. Mr. President, I take this occasion to reaffirm my support for S. 440, the War Powers Act of 1973. I have been a strong supporter of war powers legislation since my first year in the Senate in 1917 when I cosponsored a predecessor of the present bill. I am pleased that the essential features of that version, which owed so much to the initiative and wisdom of Senator STENNIS, have been incorporated in S. 440. I also want to commend the senior Senator from New York and the junior Senator from Missouri who have played major roles in shaping this bill.

It is important to have a clear understanding of just what the war powers bill would do and what it would not do. It provides a determining role for Congress in any decision to go to war, but it does not detract—nor as a statute, can it detract—in any way from the constitutional authority of the President as the Commander in Chief of our Armed Forces.

I believe it is clear that the Founding Fathers intended that Congress should have a role in making any decision to go to war when they provided in the Constitution that only Congress shall have the power to declare war. We have learned from our most recent experience with war, however, that there are situations where U.S. participation in a major conflict can result from a series of incremental decisions, none of them in itself seeming to justify a full declaration of war. In such a case, the respective roles of Congress and the President are unclear and can be the subject of bitter controversy, controversy destructive of national unity at the time it is most needed. Americans most probably will have different views on the wisdom and necessity of our entering a war, but debate should focus on the substance of the issue itself, that is, on the risks and implications of making or not making war, and not on the procedures by which the matter is to be decided. The great contribution that war powers legislation could make would be to provide a definite and established procedure for deciding on war. This would give the public the assurance that whatever decision had been reached reflected the wisdom and judgment of both their elected President and their elected Representatives in the Congress.

There are those who fear that war powers legislation might hamper the President's ability to respond quickly in case of an emergency. Others have argued that the bill gives powers to the President that he does not now have. I have given careful thought to both arguments and am convinced that the present bill strikes the proper balance in giving the President enough flexibility to respond to emergencies but not so much that it undermines the principle of shared powers and responsibilities which lies at the heart of our effort. Under the bill the President would be able to take action necessary to respond to prevent an attack or an imminent threat of attack on the United States or its Armed Forces or to evacuate American civilians endangered by hostilities abroad, but his authority to do so would end in 30 days without further explicit congressional approval. I think this is ample time for Congress to meet and make an appropriate decision on whether further action is necessary or warranted.

I hope that war powers legislation will be speedily enacted. I also hope that it will never have to be used. Unfortunately, war powers legislation cannot in itself make the world any safer a place for America. There are other ways we try to do that—by the skillful exercise of diplomacy, by maintaining a national Defense Establishment sufficient to deter any adventurism against us, by encouraging the peaceful resolution of disputes and facilitating greater people-to-people contacts with both our friends and our enemies. I think the President deserves great credit for his many efforts in these respects.

We cannot, by legislation, change the interests or intentions of any other government in the world. We can, however, insure that our own governmental processes for handling danger conform to our democratic principles and concepts of checks and balances and shared responsibility between Congress and the Executive.

Mr. TAFT. Mr. President, the question of the balance to be struck between the executive and legislative branches is at the very heart of our constitutional form of government. Historically, the initiative in foreign policy lies with the President, and I believe practically every Member of this body would agree that the executive branch must perform many important functions in developing and carrying out U.S. policy throughout the world. The power exercised by the President and the excutive branch, however, must not be arbitrary and unrestrained. The Constitution specifically provides, in article I, section 8, that the Congress shall "declare war" and "raise and support armies" with the President under article 2, section 2, provided with the responsibility as Commander in Chief to conduct war, after receiving congressional approval.

Despite this constitutional mandate, however, there have been at least 165 instances during the history of this Nation when American Armed Forces have been committed abroad. On only five oc-

casions has war been declared by the United States; and as to one of those, the Mexican war, the declaration occurred after two battles had been fought with the Congress in 1848 adopting a resolution stating that the war was commenced "unnecessarily and unconstitutionally" by the President.

Apart from declared wars, the Congress has on several occasions, when American troops have been committed in other nations, adopted measures relating to the propriety of the President's action. The legislation which we are considering today would be in keeping with this tradition of legislative approval and input and by no means inconsistent with the intent of the framers of our Constitution.

Abraham Lincoln focused upon this issue some time ago and I believe that his thoughts are very pertinent today. In a letter to Herndon, President Lincoln stated as follows:

> Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such purpose, and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect. If today he should choose to say he thinks it necessary to invade Canada to prevent the British from invading us, how could you stop him? You may say to him, "I see no probability of the British invading us"; but he will say to you, "Be silent; I see it, if you don't."

During my service in the House while on the Foreign Affairs Committee I introduced war powers legislation, and in January of 1971, when I began my service in the Senate, I introduced similar legislation on this issue. Last session I testified before the Senate Foreign Relations Committee, stating my concern for action in this area and cosponsored the legislation reported by the Foreign Relations Committee, S. 2956. Unfortunately, the House did not act on this matter. This year I am cosponsoring S. 440, and I am hopeful that the Senate will again approve this legislation. I believe it is imperative not only from a constitutional viewpoint but also from a practical position that citizens in this country, and their representatives have a voice in formulation of U.S. foreign policy.

Mr. TUNNEY. Mr. President, this body votes again today on the War Powers Act, one of the most important pieces of legislation to come before the Congress in a generation. Last year, the Senate overwhelmingly adopted this act. The vote underscored bipartisan concern over the deterioration of the constitutional mandate to vest the war-making power in the Congress. The events of the past year, which saw the President pursue unilateral military activities in Indochina, even after the removal of our troops and prisoners of war, indicate that the need for this legislation has not diminished at all. I am confident that it will be adopted once more by the Senate, and hopeful that this year the War Powers Act will become law.

In the 1950's and 1960's Americans found that our Armed Forces were involved in repeated actions: in Korea, in Lebanon, in Vietnam, and in the Dominican Republic. More than 100,000 Americans lost their lives in these actions, and in not one case was there a formal declaration of war by the Congress. This generation saw peace at home, but suffered from repeated war in remote lands far from our shores.

The Constitution vests the power to make war in the Congress. Both the language of the Constitution and the historical records of the Constitutional Convention underline the unequivocal conclusion of the framers of the Constitution that the Congress—not the President—was granted the authority to engage our Nation in war.

The Constitution recognizes, however, that while the Congress has the power to make war, the President has the power to execute it. The President, as Commander in Chief of the Armed Services, has the authority to respond to sudden attacks, conduct a war once it had started, and to command the Armed Forces once they are committed to action.

In an era of nuclear weapons, there is little likelihood that we will even again see the relatively massive armed conflicts like World Wars I and II. Instead, there will be more insurgencies, civil wars, and localized flare-ups which have marked our most recent history. Such situations may not be conducive to a formal declaration of war—in some cases the parties involved are not even sovereign states. But this does not mean that the constitutional balance on warmaking, created almost 200 years ago, is irrelevant. Indeed, the history of our tragic involvement in Indochina shows just how dangerous the abandonment of the constitutional mandate can be. The Congress and the President must move to share once again the decisionmaking power in this vital area of war and peace. New arrangements can and must be made to take account of both modern technology and communications and our historical and constitutional heritage.

In the past 25 years, there has grown a severe imbalance in the relative voice of the Congress and the President in the warmaking function. Despite the Constitution, despite the consistent traditional separation of warmaking power, affirmed by the courts, the executive branch, and the precedent of a century and a half of our history, the past generation has witnessed the dramatic expansion of the role of the Executive in the power to make war.

It has mattered not whether the President was a Democrat or a Republican. In Korea, in Vietnam, in the Dominican Republic, in Cambodia, and in Laos—a startling variety of locations and activities—the President of the United States has committed a large number of American troops—without congressional approval. Once the Congress was included in the process, it was faced with inadequate information, it was brought into the decisionmaking process well after the inception of the crisis, and often it was confronted with a fait accompli.

This is not to deny that many situations might require an American military presence. It is to stress that the methods selected by recent American Presidents for introducing and maintaining American troops in hostilities indicate that defects exist in the process by which warmaking decisions are made. In response to the increasing preponderance of the Executive in this and related areas, it is essential for the Congress to be involved and to be aware.

The War Powers Act should help Congress in this effort. It should restore to the Congress its proper role in the warmaking process. Our foreign policy can only be enhanced when individual members of Congress recognize that they have the responsibility, on an ongoing basis, for evaluating properly the foreign as well as the domestic policies in which our Nation is involved.

The War Powers Act not only restores the proper role of the Congress in the warmaking process. It also reaffirms the proper role of the Executive. It neither denies nor limits his authority. Section 3 of the bill defines the emergency conditions in which the Armed Forces of the United States may be introduced into hostilities in the absence of the declaration of war of Congress. The President can respond to any of these emergencies for a period of 30 days, after which he must go to Congress—in the absence of certain extraordinary circumstances—to sustain the continued use of the Armed Forces.

Beyond these relatively limited and specific categories, the act provides a final, considerably broader, category which allows the President to introduce the Armed Forces in hostilities in the absence of a declaration of war for any reason—but pursuant to specific statutory authorization.

Mr. President, this legislation is urgently needed. It is more important than ever that the people of America, through their elected representatives, should be closely involved in the crucial decisions of war and peace affecting their lives and well-being. This act will do this, and expose these vital decisions to open discussion and consideration, as they should be. Secret, executive warmaking has led to repeated tragedy for this great nation, and contributed more than anything else to the dissension and bitterness which have unnecessarily and tragically plagued our country in the last decade. The passage of this bill will not only restore the Congress to its rightful place in the constitutional scheme of decisionmaking, but it will also help restore the confidence of the American people in their government, and help to heal the wounds opened by our most recent excursions in undeclared warfare.

Mr. HUDDLESTON. Mr. President, I am pleased to cosponsor and support S. 440, the War Powers Act.

Now that our Nation has disentangled itself from a divisive and little-understood war, we have a special opportunity to learn from the mistakes of the past, to build on a somewhat unfortunate experience and to design for a more secure future.

Many developments offer encouragement for success: the opening of doors to China, the visit of Mr. Brezhnev to our country, the promise of continued progress at the SALT talks, the conven-

ing of the East-West Security Conference in Helsinki, and the President's reaffirmation of our Nation's continued commitment and special relationship with Europe.

We must not, however, permit these sanguine developments to divert us from a needed period of introspection—not a breast-beating or destructive period—but a constructive one designed to create structures and processes that will preclude our repeating mistakes of the past. Certainly we cannot predict the future and we cannot foretell and forestall all possible misadventures. But we can take steps to prevent a repetition of those events and actions we would prefer to see not happen again.

The war powers legislation before us reflects the best of our efforts to insure wiser courses in the future in the use of U.S. troops abroad.

It is soundly based legislation—not on some new foundation—but upon the concepts of the past and on a government of balanced powers conceived almost 200 years ago.

The principal premise of S. 440 is that the war powers are, under the Constitution, shared powers and that both the Congress and the Executive have prerogatives—and responsibilities—when U.S. Armed Forces are to be involved in hostilities abroad.

The prerogatives of the Executive lie in article II, section 1, of the Constitution which provides that the "Executive Powers shall be vested in a President of the United States of America" and in section 2 of the same article which specifies that the President shall be Commander in Chief of the Army and Navy and shall have the authority to negotiate treaties and appoint ambassadors, both, with the advice and consent of the Senate.

The basis for legislative power in the committing of troops to hostilities abroad rests in article I, section 8 of the Constitution which authorizes Congress to provide for the common defense, to declare war, to raise and support—for up to 2 years at a time—an Army and Navy, to make rules to regulate and govern the military forces; to provide for calling out the militia to enforce laws, suppress insurrection and repel invasion; and to make all laws necessary and proper for carrying into execution its forementioned powers and all other powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof.

The questions which have arisen over the exercise of the so-called war powers derive from interpretations of these powers, the intent of the framers of the Constitution and the practices of history.

Obviously, some of the constitutional provisions referred to are ambiguous and overlapping as to exercise. Furthermore, the courts, thoughout our history, have been reluctant to rule on cases involving these powers, as they relate so directly to the separation of powers.

Still there are interpretations and there are both notes on and writings by the participants in the Constitutional Convention, which provide some guidance on the meaning of the provisions. These interpretations and writings suggest, first of all, that the framers drew a distinction between offensive and defensive actions. Alexander Hamilton, for one, wrote that the Constitution provided that—

> "The Congress shall have power to declare war", the plain meaning of which is, that it is the peculiar and exclusive province of Congress, when the nation is at peace, to change that state into a state of war, whether from calculations of policy, or from provocations or injuries received; in other words, it belongs to Congress only, to go to war. But when a foreign nation declares or openly and avowedly makes war upon the United States, they are then by the very fact already at war, and any declaration on the part of Congress is nugatory; it is at least unnecessary.

Second, the power of the President in the utilization of forces abroad is not unlimited. Thomas Jefferson, noted that—

> We have already given in example one effectual check to the Dog of War by transferring the power of letting him loose from the Executive to the legislative body, from those who are to spend to those who are to pay.

And, Dr. Henry Steele Commager, in testimony before the Senate Foreign Relations Committee, suggested:

> The power to begin a war is lodged very clearly in the legislative branch, and the power to fight a war, to make the war, is lodged in the Executive.

Third, there are constitutional and legal bases for congressional authority to set regulations and prerequisites for the use of U.S. troops abroad. One of these is the latter part of the necessary and proper clause, which empowers Congress to enact laws necessary and proper for carrying out the powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof—in other words, to set procedures for the Executive and executive departments, such as Defense or State, to follow in exercising their authorities. Another, as Prof. Richard B. Morris pointed out in 1971 hearings before the Senate Foreign Relations Committee, is that since—

> Congress was given, under the Constitution, the right to declare war, it has the right to pass enabling legislation to indicate just what war is.

Finally, there are a few—a scant few, to be sure, and mainly from the early years of our Nation—but a few court cases, such as the Eliza, the Flying Fish and Prize cases, which lend credence to the argument that there must be a congressional basis for the exercise of war powers.

I believe, therefore, that there is a very adequate constitutional basis for the war powers legislation before us, and that, as Prof. Alexander Bickel recommended in the 1971 hearings, the way for Congress to reassume the constitutional powers it does have, is to reassume them. Intrinsically, the war powers bill is an attempt to redress the imbalance which, by practice and legislative inaction, grew up between the Executive and legislature and to replace it with an equilibrium based upon shared constitutional authorities and upon the concepts of a balance of powers and a separation of powers.

Beyond this, however, there are two practical bases for the legislation before us. The first, of course, is that we must seek to avoid those involvements which are likely to come to be considered as contrary to our Nation's interest and lacking of our people's support. I would be the first to admit that that is not an easy task. The future does not reside in a crystal ball, revealing events and allowing us the luxury of time to examine and analyze policy options and their implications. And, even if it did, there would be no guarantee against fallacies of our own judgments.

But, not attempting to anticipate situations and not preparing for possible alternatives breeds its own ill results. A divisive war contributes little to a nation. And, there is perhaps nothing less conscionable than asking the young men of a nation to fight in a war with obscure and unnamed objectives and without home support. As Senator JOHN STENNIS, the chairman of the Armed Services Committee so eloquently stated:

> The overriding issue is that we must insure that this country never again goes to war without the moral sanction of the American people. This is important both in principle and as practical politics. Vietnam has shown us that by trying to fight a war without the clear-cut prior support of the American people, we not only risk military ineffectiveness but we also strain, and can shatter, the very structure of the Republic.

At a time when our Nation continues to have a multitude of commitments throughout the world, as outlined in such detail in the study of U.S. Security Agreements and Commitments Abroad, we must continue to seek ways to avoid unwanted entanglements.

Beyond that, however, we must as I noted in the opening paragraphs of these remarks use this time to seek the creation of new procedures and structures to insure a more secure world for ourselves, our children and all Americans to come. To do that, we must build at home and abroad. I have already referred to a number of the promising developments abroad. S. 440 is a promising development at home.

The war powers legislation represents one method by which we can strengthen our domestic processes—one means of bringing the collective judgment of the Congress and the executive branch to bear on the use of our Nation's Armed Forces. It represents one means by which we may, hopefully, have better decisions and greater cooperation in the future in the very significant area of warmaking. It represents one means by which we might not only restore a constitutional balance, but a balance among the views, opinions, and options of those who have been selected to lead and the millions more they represent.

Mr. President, this legislation is the responsible way for Congress to discharge its obligations—not only to provide for this Nation's defense and all that implies—but also to promote peace and security. I urge its adoption by the Senate.

Mr. TALMADGE. Mr. President, the single most important decision we as a nation can make is the decision to go to war.

In our Nation's relatively short history of 197 years, the Armed Forces of the

United States have been committed abroad on 174 separate occasions. Yet, the Congress has formally declared war only five times.

This means that for every war declared by the Congress, we have been involved militarily on over 30 other occasions solely at the direction of the President.

Our Nation has been at war for 16 of the last 23 years, and in the last 10 years alone Presidents have launched major military interventions in seven different nations.

In short, Mr. President, since World War II, our Nation has become greatly overextended throughout the world, militarily, politically, and economically, often without any expressed congressional mandate.

The expansion of Presidential authority and the erosion of Congress' role in foreign affairs generally and in war policy specifically have precipitated a constitutional imbalance of grave proportions.

The purpose of S. 440, the so-called War Powers Act, is to restore that constitutional balance of responsibilities between the executive and legislative branches without hamstringing the President in the performance of his duties as Commander in Chief.

How does this legislation go about accomplishing this goal? Stated simply, it defines the circumstances in which the President, without prior congressional authorization, can unilaterally commit the Armed Forces of our Nation, and the circumstances in which prior congressional authorization is required before the President can act militarily.

The starting point, and rightly so, is the Constitution itself. The bill recognizes that the Constitution vests in the President the power, even in the absence of a congressional declaration of war, to use American forces to repel sudden attacks on U.S. territory or U.S. forces outside this country, and to protect U.S. nationals whose lives are endangered abroad. These emergency powers have been exercised by various Presidents in the past, and there is no question that this authority arises from the President's independent constitutional office as Commander in Chief.

The bill goes to great lengths to preserve and protect these constitutional prerogatives of the President. Recognizing that ours is a troublesome and perilous world, it further empowers him to use the Armed Forces to forestall the threat of a direct and imminent attack on this country or this country's forces abroad.

However, the bill clearly and unequivocally states that any other use of the Armed Forces by the President for any other purpose in any other circumstance is prohibited, unless specifically authorized by Congress by law in advance.

Perhaps most importantly, Mr. President, the bill prescribes procedures by which the Congress may overrule the President's exercise of his emergency war powers.

Any commitment of U.S. forces initiated by the President under the emergency conditions outlined in the bill is limited to 30 days, unless Congress by specific legislation authorizes their continued use.

Moreover, if it disapproves of the President's action, Congress may pass legislation terminating the use of our forces before the 30-day period has expired.

In my judgment, these provisions are the essence of the bill. The President, any President, would stand forewarned against any emergency use of the Armed Forces that did not conform with the law and that would not command the support of the Congress and the American people.

We want no more of this calling of American troops into action because of some vague treaty commitment or executive agreement.

Let us have no more of this implying or inferring after-the-fact approval of a Presidential war because of congressional passage of an appropriations bill providing supplies and ammunition to troops already in the field of battle.

Finally, Mr. President, in cosponsoring and supporting this legislation, my intention is not to criticize those Presidents whose administrations have spanned the Vietnam war. My desire is not to strip the Commander in Chief of his rights and responsibilities under the Constitution. Nor am I motivated by jealousy or animosity toward the executive branch. If any indictment lies, it more appropriately lies with the Congress which has stood mute while its constitutionally vested role in war policy and decisions was eroded.

In answering the question of why, after 197 years, a war powers bill is needed now, let me restate what I said at the outset: The single most important decision we as a nation can make is the decision to go to war. I strongly feel that we must make that decision as a nation. In the recent past, however, the President, acting virtually alone, has determined whether we followed a course of war or peace. This is not right. It is the people who should decide this course, through their elected representatives. The decision is too great for one man to make alone.

The War Powers Act, S. 440, is a step in the right direction toward restoring this authority and this responsibility to the people and creating a better and more effective partnership between the Congress and the executive branch in foreign affairs.

Mr. HRUSKA. Mr. President, I rise in opposition to the bill S. 440 "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."

This is a bill which seeks to legislate in a field of constitutional considerations; to try to effect a change in powers granted to the President by the Constitution.

To the extent it does so, it will be totally ineffective, and without force or effect, except perhaps to confuse, delude, and even render affirmative harm.

It is quite clear that wide sympathy for the bill is based upon a desire to do something about future Vietnams. This is understandable because memories of the unhappy episode are still strong and bitter. While such an objective to do something about future episodes is laudable, the bill would be highly counter-productive in this regard. The greater likelihood is that of engendering Vietnam-type situations in the future, rather than preventing them.

The Constitution's meaning regarding deployment of our Armed Forces abroad has become well defined in these past 185 years. This has come about not only through the explicit language of the Constitution, but also through usage in literally scores of instances.

Such development and usage have served our Republic well. Even if a statute could change them, it would not be wise to do so.

But it is respectfully submitted that the pending measure cannot alter that which the Constitution confers. It is to this proposition that I address myself.

Under the Constitution the power to declare war, to raise and support the military, and related powers, are vested in the Congress. The power to command and to deploy the Armed Forces is vested in the President as Commander in Chief. As Prof. Eugene Rostow pointed out in a debate with Prof. Alexander Bickel at Yale Law School last October, this is a typical example under our Constitution of divided power which is also shared. There are many other examples as well.

Before us now is a bill designed to define the limits of the President's authority in this area. This is, so it is claimed, a restorative measure, offered to insure that Congress may freely exercise those powers the Constitution and the courts have said it already has. But in attempting to make specific what the Constitution has left general, and in trying to define in advance the outer limits of the President's authority to act in the interest of national security, S. 440 charts a precarious constitutional course.

Congress cannot by legislation draw to itself power meant to be shared at the least, and at the most to be exercised by a coequal branch of government. If S. 440 does this, it is unconstitutional. If it does not, it amounts to a useless surplusage which could easily lead to misunderstanding both within and outside this country.

Does the power of Congress to participate in the warmaking process need to be restored? I think history argues to the contrary. There have been close to 200 instances in which this country has employed military force. There have been but five formal declarations of war during this period, with perhaps six additional congressional authorizations. This Senator is compelled to agree with Professor Rostow, who asserted during the previously mentioned debate with Professor Bickel at Yale, that there has been no substantial change in recent years in the pattern of constitutional usage regarding the division of the war powers between Congress and the Presidency.

Mr. President, I am most fearful that what we have in S. 440 is not an effort to restore atrophied authority—an authority which is as alive and viable now as it was when the Constitution was

framed—but is instead an attempt to amend the Constitution by a simple legislative act.

Cases have been put forward in support of this legislation which, in the opinion of this Senator, represent extremely dubious legal precedent. A prime example is the case of *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952). This decision related to a purely domestic effort to take over the major steel mills of this country. If the case stands for anything at all, it is the reaffirmation of the President's authority to act as Commander in Chief in response to external threats as expressed in the following language from the opinion by Justice Jackson:

> We should not use this occasion to "circumscribe", much less to contract, the lawful role of the President as Commander-in-Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society.

Other cases such as *United States* v. *Midwest Oil Company*, 236 U.S. 459 (1915), are not only of questionable support for the limitations drawn in S. 440, but may actually provide precedent for the opposition point of view.

These cases and all other relevant decisions need to be analyzed and placed in their proper perspective by recognized constitutional scholars. Existing bodies of opinion need to be gathered within a logical framework of study. The Judiciary Committee is the place to do this, Mr. President, not the Senate floor.

Reasonable men often differ on questions of great moment. The approach taken in this legislation has been generally supported by Professor Bickel of Yale, and opposed by Professor Moore of the University of Virginia—both men distinguished legal scholars. This type of disagreement is not new. But the fact that there is some basic disagreement on what Congress can do under the Constitution by attempting to legislate in this area only underscores the fact that we must proceed with great caution.

We will soon celebrate our 200th year as a Republic. The basic war powers provisions in the first two articles of our Constitution have remained as the guiding principles throughout our history, throughout the almost 200 incidents where armed force was employed by this country outside its borders. It is late in the day for us to now proclaim that we must have legislation now to improve this balance of power, to somehow make it balance better. Mr. President, either something balances or it does not. And as I read the Constitution, the balance is there—and has been all along. The Congress has been playing its role all along, through the use of the purse-strings, regulation of the size of the military, and expressions of viewpoints either in accord with or in opposition to policies taken by the executive branch. If the results have not always turned out to our liking, this does not mean that the Constitution is at fault—only ourselves.

If it is felt that the provisions of the Constitution dealing with war powers are indeed in need of revision, let us then approach this subject in the proper fashion. We have amended the Constitution from time to time. It can be done again, if need be. But I do not believe bills like S. 440 can legally be utilized to do this.

Mr. President, scholarly literature on this subjest is quite volumious. One of the better papers is the one delivered before the Subcommittee on National Security Policy and Scientific Development (Committee on Foreign Affairs) in the House of Representatives on July 1, 1970. The witness was the Honorable William H. Rehnquist, then Assistant Attorney General, Office of Legal Counsel. He is now a Justice of the United States. I ask unanimous consent that the text of his statement be printed at the conclusion of my remarks.

Mr. President, the Senate would do well to reject this pending bill.

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

STATEMENT OF WILLIAM H. REHNQUIST

Mr. Chairman: I am pleased to appear before the Subcommittee this morning to discuss the constitutional division of war-making authority between the President and Congress. I shall discuss the legal and historical authorities which seem to me relevant on this question. I have tried to make myself familiar with a number of the bills and resolutions which are currently before this Subcommittee and would be happy to answer questions on them. However, my presentation will be addressed to the overall constitutional question presented and will not focus specifically on these proposals.

As Mr. Stevenson has already pointed out, the constitutional question under consideration is an exceedingly difficult one. Both the President and Congress have some measure of authority over war-making. The Congress is specifically granted the powers "to raise and support armies," "provide for the common defense", "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water," "provide and maintain a navy," "to make rules for the government and regulation of the land and naval forces," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers. . . ." The President, on the other hand, is designated as the "Commander-in-Chief of the Army and Navy of the United States" and is directed to "take Care that the Laws be faithfully executed." This textual allocation of authority readily suggests that a division of the Nation's war power between the President and Congress was intended. An examination of the proceedings of the Constitutional Convention confirms that suggestion. Those proceedings clearly indicate that the Framers did not intend to precisely delimit the boundary between the Executive Branch and that of the Legislative Branch. While the Framers rejected the traditional power of kings to commit unwilling nations to war, they at the same time recognized the need for quick Executive response to rapidly developing international situations.

The accommodation of these two interests took place in the session of the Convention on Friday, August 17, 1787. On that date, the Convention was discussing draft language which would have empowered Congress "to make war". The Convention, of course, ultimately decided to confer instead the power "to declare war". The debate which led to this change, I believe, is illuminating. Charles Pinckney urged that the war-making power be confided to the Senate alone, while Pierce Butler asked that the power be vested in the President. James Madison and Elbridge Gerry then jointly moved to substitute the word "declare" for the word "make," thus "leaving to the Executive," in their words, "the power to repel sudden attacks." Here then was the Convention's recognition of the need for swift Executive response in certain situations. Rufus King supported substitution of the word "declare" on the ground that the word "make" might be understood to mean "conduct war" which he believed to be an Executive function. It is interesting to note that when the first vote on the motion was taken, there were two votes in favor of retaining "make." However, after Mr. King made his point regarding the conduct of hostilities, the representative from Connecticut, Mr. Ellsworth, changed his vote to support the substitution. Thus, the only dissenting vote was that of New Hampshire. Pinckney's motion to strike out the whole clause and thereby presumably vest the entire war-making power in the Executive was then defeated by voice vote.

The Framers were painting with an extremely broad brush; they likely realized that it would be unwise to attempt to fix in detail, and to freeze, the allocation of authority between the President and Congress. The Framers undoubtedly recognized the wide variety of international situations which might arise and saw fit to do no more than announce general contours of the authority of the President and Congress. Several of the pending legislative proposals are, I believe, inconsistent with this salutary approach, and I believe for that reason that their enactment would be unwise.

The Convention debate indicates that the Congress has exclusive authority over some phases of war-making and that the President has similar authority over others. Congress, for example, is the only branch of government which can formally declare war. On the other hand, the President has unrestricted and exclusive authority to repel sudden attacks. It is between these two ends of the spectrum that the question of deployment of troops or commitment of them to limited hostilities arises. In this area of "shared power," an attempt must be made to understand the process of decision leading to the deployment and commitment to combat of our Armed Forces. There are many historical precedents. On numerous occasions the President has consulted the Congress before taking action; on numerous others, he has not. If these precedents demonstrate anything, they demonstrate that different situations require different responses and procedures, and that hard and fast rules should be avoided.

The Cuban missile crisis is a case in point. In that instance, it should be noted that Congress had enacted a joint resolution in September, 1962, before the Russian missiles were discovered. The language of the resolution was quite broad and it arguably authorized President Kennedy's later action. I would suggest, however, that even without that resolution President Kennedy's action was entirely consistent with the constitutional framework. Although there had been no actual attack on the United States and it therefore could not be said that President Kennedy was repelling a sudden attack, the situation was a grave one and the threat to the Nation's security necessitated a speedy and effective response. The situation required immediate action, and there was insufficient time after the discovery of the missiles and launching apparatus for formal consultation with Congress. In my judgment, it would be a great mistake to attempt to prevent a President from responding immediately to a similar threat arising in the future.

I should like to turn my attention now to the suggestion which has now gained currency in some quarters; namely, that Con-

gress in recent decades has relinquished its constitutional authority over war-making to the President. Stated categorically, this contention cannot withstand an examination of the record. In the first place, recent Presidents have repeatedly called upon Congress to share in expressing the determination of the United States to meet foreign aggression.

Congress, of course, enacted the Gulf of Tonkin Resolution at the request of President Johnson. Similarly, Congress enacted resolutions in 1962 in regard to Cuba and in 1958 in connection with the Middle East. In each of these instances, Congress and the President acted together, and thus presented a united front to the world. Where time permits consultation, this unity should be sought for it is unquestionably in the best interests of the nation that Congress and the President speak with a single voice on such a subject.

Congress, then, has exercised its constitutional authority in recent years. This is not to say, however, that Congress must always be consulted before American Armed Forces are deployed or committed to hostilities abroad. There are numerous instances in our history in which Presidents have deployed American Armed Forces outside of the United States in a way which invited hostile retaliation from a foreign power. Congress has on some of these occasions acquiesced in the President's action without formal ratification; on others it has ratified the President's actions; and on still others it has taken no action at all. On several of the occasions, individual members of Congress, and, at the close of the Mexican War, one House of Congress, on a preliminary vote, have protested Executive use of the Armed Forces. While a particular course of Executive conduct cannot conclusively establish a constitutional precedent in the same manner as it would be accomplished by an authoritative judicial decision, a long-continued practice on the part of the Executive, acquiesced in by the Congress, is itself some evidence of the existence of the constitutional authority necessary to support the practice. As stated by Justice Frankfurter in his concurring opinion in *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579, 610.

"The Constitution is a framework for government. Therefore the way the framework is consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of the text or supply *& Tube Co.* v. *Sawyer,* 343 U.S. 579, 610:

The historical examples have been marshaled in numerous recent studies of the President's powers, and I will but summarize some of them briefly.

President Jefferson, in 1801, sent a small squadron of American naval vessels into the Mediterranean to protect United States commerce against the Barbary pirates. He was of the view that for these ships to take offensive, as opposed to defensive, action, congressional action would be necessary. Yet it is worth noting that by dispatching these warships to the Barbary Coast to protect United States commerce from piracy, Jefferson invited retaliation.

In 1845 President Polk ordered military forces to the coast of Mexico and to the western frontier of Texas in order to prevent any interference by Mexico with the proposed annexation of Texas to the United States. Following annexation in 1946, Polk ordered General Zachary Taylor to march from the Nueces River which Mexico claimed as the southern border of Texas, to the Rio Grande River, which Texas claimed as her southern boundary, and beyond. While so engaged, Taylor's forces encountered Mexican troops, and hostilities between the two nations commenced on April 25, 1846.

There had been no prior authorization by Congress for Taylor's march south of the Nueces. Justice Grier, in his opinion in *The Prize* cases, commented on this fact, stating:

"The battles of Palo Alto and Resaca de la Palma had been fought before the passage of the act of Congress of May 13, 1846, which recognized 'a state of war as existing by the act of the Republic of Mexico.'" 2 Black 634.

In 1854, President Pierce approved the action of the naval officer who bombarded Greytown, Nicaragua in retaliation against a revolutionary government that refused to make reparations for damage and violence to United States citizens. This action was upheld by Justice Samuel Nelson, a Justice of the Supreme Court of the United States, sitting as a Circuit Justice in *Durand* v. *Hollis,* 4 Blatch. 451 (1860). In his opinion in that case, Justice Nelson said:

"The question whether it was the duty of the President to interpose for the protection of the citizens at Greytown against an irresponsible and marauding community that had established itself there, was a public political question, in which the government, as well as the citizens whose interests were involved, was concerned, *and which belong to the Executive to determine;* and his decision is final and conclusive, and justified the defendant in the execution of his orders as Secretary of the Navy." 4 Blatch. 454–455 (emphasis supplied).

In April, 1861, President Lincoln called for 75,000 volunteers to suppress the rebellion by the southern states, and proclaimed a blockade of the Confederacy. These actions were taken prior to their later ratification by Congress in July, 1861. The Supreme Court upheld the validity of the President's action in proclaiming a blockade in the *Prize Cases.*

In 1900, President McKinley sent an expedition of 5000 United States troops as a component of an international force during the Boxer Rebellion in China. While Congress recognized the existence of the conflict by providing for combat pay, it neither declared war nor formally ratified the President's action.

Similar incidents in Central America took place under the administrations of Presidents Theodore Roosevelt, Taft and Wilson. Naval or armed forces were sent to Panama, Nicaragua, and twice to Mexico in the first two decades of the Twentieth Century. On none of these occasions was there prior congressional authorization.

Prior to the Vietnam conflict, the most recent example of Presidential combat use of American forces without congressional declaration of war was President Truman's intervention in the Korean Conflict. In many senses, this is undoubtedly the high water mark of Executive exercise of the power of Commander-in-Chief to commit American forces to hostilities.

Following the invasion of South Korea by the North Koreans in June, 1950, and a request for aid by the United Nations Security Council, President Truman ordered air and sea forces to give South Korean troops cover and support and ordered the Seventh Fleet to guard Formosa. Ultimately 250,000 troops were engaged in the Korean War which lasted for more than three years.

President Truman relied upon the United Nations Charter as a basis for his action, as well as his power as Commander-in-Chief. The fact that his actions were authorized by the United Nations Charter, however, does not reduce the value of the incident as a precedent for Executive action in committing United States Armed Forces to extensive hostilities without a formal declaration of war by Congress. The United Nations Charter was ratified by the Senate and has the status of a treaty, but it does not by virtue of this fact override any constitutional provision. *Geofroy* v. *Riggs,* 133 U.S. 258; *Reid* v. *Covert,* 354 U.S. 1. If a congressional declaration of war would be required in other circumstances to commit United States forces to hostilities to the extent and nature of those undertaken in Korea, the ratification of the United Nations Charter would not obviate a like requirement in the case of the Korean Conflict.

Presidents have likewise used their authority as Commander-in-Chief to deploy United States forces throughout the world. Critics of President Wilson claimed that his action in arming American merchant vessels in early 1917 precipitated our entry into the First World War.

Similarly, President Roosevelt's critics have asserted that various actions he took to aid the Allies in the year 1941 played a part in our involvement in the Second World War. Whatever substance there may be to these criticisms, the Presidential actions do stand as the constructions placed by those two Presidents on their power as Commander-in-Chief of the Armed Forces.

I do not contend that these historical precedents establish the principle that the President alone has authority to deploy and commit American Armed Forces abroad. I mention them for the purpose of demonstrating that throughout our history our Presidents have, on occasion, deployed American forces without first obtaining congressional authorization. To be sure, our recent Presidents have engaged in the same practice, but in view of the similarity between the practices followed this century and last it cannot be validly contended that congressional authority has eroded in recent years. Far from demonstrating any weakness in our system, the events of the last two hundred years confirm the wisdom of the flexible design set out in the Constitution.

I would close by stating the obvious fact that this is an area in which cooperation between the President and Congress is vitally important. The suggestion that the power of Congress has somehow "atrophied" is untenable. If Congress had occasion to complain of President Truman in 1950, it had equal occasion to complain of President Polk in 1846.

The Framers did not set up a checkerboard of rigidly marked alternately colored squares with one color assigned to the President and the other to Congress. They designed a more flexible plan for joint responsibility which left room for "play at the joints." Indisputably belonging to Congress alone is the decision as to how much money shall be appropriated to the raising and supporting of United States military forces. Indisputably belonging to the President alone is the power to repel sudden attacks, the power to determine how hostilities lawfully in progress shall be conducted, and the power to protect the lives and safety of U.S. forces in the field. The middle ground is understandably less clearly delineated, but there are guideposts based both on historic usage and the language of the Constitution which shed light on the proper allocation of responsibility in particular cases. More than this the Framers wisely did not attempt; and I seriously question whether their decision on this point should, even if it could, be reversed by enactment of legislation now pending before the Committee.

The enactment of legislation which would lay down specific guidelines as to the respective constitutional roles of the President and Congress, runs counter to each of these principles.

Mr. ROBERT C. BYRD. Mr. President, I rise in support of S. 440, the war powers bill, of which I am a cosponsor. No legislation, in my judgment, is more essential than is this bill in the efforts of the Congress of the United States to restore a proper balance between the

executive and legislative branches of government.

The significance of this bill, however, goes beyond that immediate and desirable objective. It is important to all citizens as well, inasmuch as the life of every citizen of this Republic can be affected by the far-reaching decisions which may be made with respect to the questions of war and peace.

This bill plows no new ground. It seeks instead, to reaffirm and to reestablish the original intent of the framers of the Constitution. Its aim, in the simplest terms, is to set forth guidelines for the use of the Armed Forces of the United States in so-called "undeclared wars," so that in the future the best judgment of both the Congress and the Chief Executive may jointly be brought to bear upon the problem at hand.

Not only the events of recent years, but also the use of U.S. forces in undeclared hostilities by Presidents in years past, make this legislation necessary. Passage of this bill is especially important at this point in our history when the United States is moving toward a reassessment of its responsibilities and its future role as a world power. The approval of this bill is needed so that in the future there may be no mistake and no misunderstanding about the circumstances in which our Armed Forces may be used without a declaration of war by the Congress.

The authority of the President of the United States to act appropriately in an emergency is not impaired by this bill. Section 3 of this measure spells out in detail the conditions or circumstances under which the President, as Commander in Chief, can act to repel or forestall sudden attacks, or to protect U.S. citizens whose lives might be endangered abroad. Subsections (1), (2), and (3) codify the implied power of the President to act in emergency situations. Subsection (4) of section 3 deals with the delegation by Congress of additional authority to the President through statutory action and establishes a means by which the President and the Congress, working together, could act to deal with any contingency which might arise.

It is this provision of the bill which would be brought into play in any future situation such as that from which we are only now extricating ourselves in Indochina. The language here would require that the Congress participate with the President in any decision to authorize use of the Armed Forces in any situation other than the three emergency categories of sudden attack upon the United States, attack upon its Armed Forces, or the protection of its nationals abroad.

Section 5 of the bill provides the 30-day limitation upon emergency action by the President, and seems to me to be as satisfactory a solution as may be devised to the problem of reconciling the necessity for swift retaliatory action in the event of attack with the constitutional requirement that Congress make the ultimate judgment upon the question of waging war.

It is not my purpose in these brief remarks to go into more detailed aspects of S. 440. Suffice it to say, I think, that this is a bill whose time has come. Presidential warmaking must be brought under control. The Congress must reassert itself in this vital area in which the Constitution makes it so unmistakably clear that the legislative branch bears the ultimate responsibility. The disclosures this week of the hundreds of secret U.S. bombing raids carried out over Cambodia and Laos—and the falsification of reports concerning them—sharply underscores the necessity for action.

If war is too important a matter to be left to the generals, it is also too important a matter to be left to the Commander in Chief alone. This is not to suggest that the Congress is infallible in its wisdom. But in times when national commitments may require action, or in times of national peril, the collective best judgment of the Nation's elected leaders—legislative and executive together—is the Nation's one best hope of following the right course of action.

Mr. DOLE. Mr. President, the War Powers Act before the Senate today is a proposal of substantial importance to the Nation. It steps into one of the Constitution's uncharted gray areas and attempts to establish some clear lines of authority, responsibility and direction where now there is only the ambiguity of yesterday's history and the uncertainty of tomorrow's events and circumstances.

The war power is one of the most important aspects of nationhood. It is a country's ability to defend itself and assert its rights in the world. Over the course of history the war power has been abused by some nations, and the right of self defense has undergone a cancerous mutation into a tool of aggression. But as we look back at other nations and the history of wars between them, we see that the abuse of the war power did not usually originate with the nation itself, its people. Rather this abuse grew out of improper allocation or assumption of the ability to use the war power. Sometimes this wrongful use of the war power could be traced to structural deficiencies in the government. In other cases the structure was sound, but individuals or groups within the structure were unwise, subject to error or manifestly evil.

Our country, however, has had the blessing of a sound constitutional framework which has given full opportunity for good to prosper, has given room for error to be discovered and has never permitted evil to be unleashed.

To fully appreciate the importance of this wise and wonderful foundation for our Republic and understand the evolution of the war power's exercise, it would be appropriate to look back over a period of events beginning 196 years ago next month.

DIVISION OF THE WAR POWER

The draftsmen of the Constitution clearly intended to divide the war power between the President and Congress, but just as clearly, did not intend to precisely define that boundary. They rejected the traditional power of kings to commit unwilling nations to war to further the king's international political objectives. At the same time, they recognized the need for quick presidential response to rapidly developing international situations.

The accommodation of these two interests took place in the session of the constitutional convention on Friday, August 17, 1787, when the enumeration of the powers of Congress were submitted to the delegates. A discussion occurred on the draft language empowering Congress "to make war."

As reported by James Madison, Charles Pickney urged that the warmaking power be confided to the Senate alone, while Pierce Butler urged that the power be vested in the President. James Madison and Elbridge Gerry then jointly moved to substitute the word "declare" for the word "make," "leaving to the President the power to repel sudden attacks." John Sherman expressed a preference to "make" as opposed to "declare," because the latter was too narrow a grant of power. However, he expressed the view that the grant of power to Congress to "make" war would nonetheless permit the President to repel attack, although not to commence war. Gerry and George Mason opposed the giving of the power to declare war to the President. Refus King supported the substitution of the word "declare," urging that the word "make" might be understood to mean "conduct" war, which later was a presidential function.

With only New Hampshire dissenting, it was agreed that the grant to Congress should be of the power to declare war. Pinckney's motion to strike out the whole clause, and thereby presumably to leave the way open to vest the entire warmaking power in the President, was then defeated by a voice vote.

The Framers of the Constitution, in making this division of authority between the executive and the legislative branches, did not make a detailed allocation of authority between the two branches. But nearly 200 years of practice has given rise to a number of precedents and usages, although it cannot be confidently said that any sharp line of demarcation exists as a result of this history.

RECOGNITION OF ARMED CONFLICT SHORT OF "WAR"

Before turning to historical practice for the light which it throws upon the proper interpretation of the President's power, let me first dispel any notion that the United States may lawfully engage in armed hostilities with a foreign power only if Congress has declared war. From the earliest days of the Republic, all three branches of the Federal Government have recognized that this is not so, and that not every armed conflict between forces of two sovereigns is "war." This fact affords no final answer to the constitutional question of the division of authority between the President and Congress in exercising the war power, but it does suggest that the effort to find an answer is not advanced by a mechanical application of labels to various fact situations.

Congress, during the so-called undeclared war with France which lasted from 1798 to 1800, authorized by statute

limited use of this Nation's Armed Forces against those of France. The fifth Congress, 1 Statute 578.

In *the Eliza*, a case arising out of this "undeclared war," the Supreme Court described differences between war and other armed conflicts as being differences between "solemn war" and "imperfect war":

If it be declared in form, it is called solemn, and is of the perfect kind: because one whole nation declaring war are authorized to commit hostilities against all the members of the other, in every place and under every circumstance. In such a war, all the members act under a general authority, and all the rights and consequences of war attach to their condition.

But hostilities may subsist between two nations, more confined in its nature and extent; being limited as to places, persons and things; and this is more properly termed imperfect war; because not solemn, and because those who are authorized to commit hostilities act under special authority and can go no further than to the extent of their commission. *The Eliza*, 4 Dall. 37, 40–41.

(NOTE.—In that case, a French privateer took possession of an American ship that was later recaptured by Americans who claimed entitlement to payment from the ship's owners. The questions arose in interpretation of two statutes as to what they were entitled to. To answer that question, the Court had to decide whether we were at war with France.)

While the Court termed both forms of military action "war," the distinction which it drew likewise separates the declared wars of the 20th century, such as the two World Wars, and the undeclared armed conflicts such as have more recently occurred in Korea and in Southeast Asia. In both of the two World Wars, the declarations of war were viewed by the executive branch to authorize complete subjugation of the enemy, and some form of "unconditional surrender" on the part of the enemy was the announced goal of the allied nations. In Korea and Vietnam, on the other hand, the goals have been the far more limited ones of the maintenance of territorial integrity and of the right of self-determination.

As has been pointed out many times, the United States throughout its history has been involved in armed conflicts short of declared war, from the undeclared war with France in 1798–1800 to Vietnam. I will discuss the more significant of these involvements later.

THE PRESIDENT AS COMMANDER IN CHIEF

Because of the nature of the President's power as Commander in Chief and because of the fact that it is frequently exercised in foreign affairs, there are few judicial precedents dealing with the subject. Such judicial learning as there is on the subject, however, makes it reasonably clear that the designation of the President as Commander in Chief of the Armed Forces is a substantive grant of power, and not merely a commission which treats him as a Supreme Commander.

Chief Justice Marshall, writing for the Supreme Court in *Little* v. *Barreme* (2 Cr. 170) concluded that the seizure of a ship on the high seas had not been authorized by an act of Congress. In the course of the opinion, he stated:

It is by no means clear that the President of the United States, whose high duty it is to take care that the laws be faithfully executed, and who is commander in chief of the Armies and Navies of the United States, might not, without any special authority for that purpose, in the then existing state of things, have empowered the officers commanding the armed vessels of the United States, to seize and send into port for adjudication, American vessels which were forfeited by being engaged in this illicit commerce, 2 Cranch at 177.

Justice Grier, speaking for the Supreme Court in its famous decision in the *Prize* cases, likewise viewed the President's designation as Commander in Chief as being a substantive source of authority on which he might rely in putting down rebellion:

Whether the President in fulfilling his duties, as Commander in Chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, in a question to be decided by him, and this court must be governed by the decisions and acts of the political department of the Government to which this power was entrusted. He must determine what degree of forces the crisis demands. 2 Black 625, 670.

More recently, Justice Jackson, concurring in *Youngstown Sheet and Tube Co.* v. *Sawyer*, said:

We should not use this occasion to circumscribe, much less to contract, the lawful role of the President as Commander in Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society. 343 U.S. 579, at 645.

The limits of the President's power as Commander in Chief are nowhere defined in the Constitution, except by way of negative implication from the fact that the power to declare war is committed to Congress. However, as a result of numerous occurrences in the history of the Republic, more light has been thrown on the scope of this power.

SCOPE OF POWER AS COMMANDER IN CHIEF

The questions of how far the Chief Executive may go without congressional authorization in committing American military forces to armed conflict, or in deploying them outside of the United States and in conducting armed conflict already authorized by Congress, have arisen repeatedly through the Nation's history. The President has asserted and exercised at least three different varieties of authority under the power as Commander in Chief;

First, authority to commit military forces of the United States to armed conflict, at least in response to enemy attack or to protect the lives of American troops in the field.

I might add that this is precisely the type of authority we talked about with reference to the Church-Cooper resolution.

Second, authority to deploy U.S. troops throughout the world, both to fulfill U.S. treaty obligations and to protect American interests; and

Third, authority to conduct or carry on armed conflict once it is instituted, by making and carrying out the necessary strategic and tactical decisions in connection with such conflict.

Congress has on some of these occasions acquiesced in the President's action without formal ratification; on others, it has ratified the President's action; and on still others, it has taken no action at all. On several occasions, individual Members of Congress have protested Presidential use of the Armed Forces. At the close of the Mexican War, the House of Representatives went so far as to pass an amendment to a pending resolution, labeling the war as unnecessary and unconstitutional. On final passage, the amendment was deleted. Although the President's actions, to which there was no opportunity for the Congress to effectively object, cannot establish a constitutional precedent in the same manner as it would be established by an authoritative judicial decision, a long continued practice on the part of the President, acquiesced in by the Congress, is itself some evidence of the existence of constitutional authority to support such a practice. *United States* v. *Midwest Oil Co.*, 236 U.S. 459. As stated by Justice Frankfurter in his concurring opinion in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 610:

The Constitution is a framework for Government. Therefore, the way the framework has consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the constitution or legislation, but they give meaning to the words of a text or supply them.

COMMITMENT OF MILITARY FORCES TO ARMED CONFLICT WITHOUT CONGRESSIONAL AUTHORIZATION

President Jefferson in 1801 sent a small squadron of American naval vessels into the Mediterranean to protect U.S. commerce against threatened attack by the Barbary pirates of Tripoli. In his message to Congress discussing his action, Jefferson took the view that it would require congressional authorization for this squadron to assume an offensive, rather than a defensive, stance.

In May 1845 President Polk ordered military forces to the coasts of Mexico and to the western frontier of Texas—still at that time an independent republic—in order to prevent an interference by Mexico with the proposed annexation of Texas to the United States. Following annexation, Polk ordered Gen. Zachary Taylor to march from the Neuces River, which Mexico claimed was the southern border of Texas, to the Rio Grande River, which Texas claimed was the southern boundary of Texas. While so engaged, Taylor's forces encountered Mexican troops, and hostilities between the two nations commenced on April 25, 1846. While Polk, 2½ weeks later requested a declaration of war from Congress, there had been no prior authorization for Taylor's march south of the Neuces.

In 1854 President Pierce approved the action of a naval officer who bombarded Greytown, Nicaragua, in retaliation against a revolutionary government that refused to make reparation for damage and violence to U.S. citizens.

In April 1861 President Lincoln called for 75,000 volunteers to suppress the rebellion by the Southern States, and proclaimed a blockade of the Confederacy. The Supreme Court in the prize cases, 2 Black 635—1863—upheld the action taken by President Lincoln prior to their later ratification by Congress in July, 1861, saying:

> If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. 2 Black at 668.

In 1900 President McKinley sent an expedition of 5,000 U.S. troops as a component of an international force during the Boxer Rebellion in China. While Congress recognized the existence of the conflict by providing for combat pay, 31 Statute 903, it neither declared war nor formally ratified the President's action. A Federal court, however, reiterated the early recognition of limited or undeclared war:

> In the present case, at no time was there any formal declaration of war by the political department of this Government against either the Government of China or the "boxer" element of that government. A formal declaration of war, however, is unnecessary to constitute a condition of war. *Hamilton* v. *McClaughry*, 136 F. 445, 449 (cir. Ct.D. Kan. 1905).

Presidents Theodore Roosevelt, Taft, and Wilson on more than one occasion committed American troops abroad to protect American interests. In November 1903, President Roosevelt ordered the U.S. Navy to guard the Panama area and prevent Colombian troops from being landed to suppress the Panamanian insurrection against Colombia. In this annual report to Congress in 1912, President Taft reported sending some 2,000 marines to Nicaragua—at the request of the President of Nicaragua—and the use of warships and troops in Cuba. He merely advised Congress of these actions without requesting any statutory authorization.

President Wilson on two separate occasions committed American Armed Forces to hostile actions in Mexican territory. In April 1914, he directed a force of sailors and marines to occupy the city of Vera Cruz during the revolution in that country. The city was seized and occupied for 7 months without congressional authorization. In 1916, Wilson ordered General Pershing and more than 10,000 troops to pursue Pancho Villa into Mexican territory following the latter's raid on Columbus, N. Mex.

The most recent example of Presidential combat use of American Armed Forces without congressional declaration of war, prior to the Vietnam conflict, was President Truman's intervention in the Korean conflict. Following invasion of South Korea by North Koreans on June 25, 1950, and a request for aid by the U.N. security council, President Truman ordered U.S. air and sea forces to give South Korean troops cover and support. He ordered the 7th Fleet to guard Formosa. On June 30, the President announced that he had authorized the use of U.S. ground forces in the Korean war following the collapse of the South Korean army. Ultimately, the number of troops engaged in the Korean conflict reached 250,000, and the conflict lasted more than 3 years. President Truman's action without congressional authorization precipitated the "Great Debate" in Congress which raged from January to April 1951.

While President Truman relied upon the U.N. Charter, as well as his power as Commander in Chief, his action stands as a precedent for presidential action in committing U.S. armed forces to extensive hostilities without formal declaration of war by Congress.

The U.N. Charter, as a result of its ratification by the Senate, has the status of a treaty, but it does not by virtue of this fact override any provisions of the Constitution. Though treaties made in pursuance of the Constitution may under the supremacy clause override specific constitutional limitations. *Geofroy* v. *Riggs*, 133 U.S. 258; *Reid* v. *Covert*, 351 U.S. 487. If a congressional declaration of war would be required in other circumstances to commit U.S. forces to hostilities similar in extent and nature to those undertaken in Korea, the ratification of the U.N. Charter would not obviate a like requirement in the case of the Korean conflict. While the issue of presidential power which was the subject of the great debate in Congress was never authoritatively resolved, it is clear that Congress acquiesced in President Truman's intervention in Korea. See Rees, "The Limited War"—1964; Pusey, "The Way We Go To War"—1969.

DEPLOYMENT OF U.S. TROOPS THROUGHOUT THE WORLD

In February 1917, President Wilson requested congressional authority to arm American merchant vessels. When that authority failed of passage in Congress as a result of a filibuster or extended debate, Wilson proceeded to arm them without congressional authority, stating that he was relying on his authority as Commander in Chief.

Near the close of the First World War, President Wilson announced a decision to send American troops to Siberia. The troops so sent remained for over a year, their withdrawal beginning in January 1920. There was no congressional authorization of such disposition of troops, and the United States had not declared war on Russia.

In 1941, prior to Pearl Harbor, President Roosevelt utilized his power as Commander in Chief to undertake a series of actions short of war, designed to aid the Allied forces in the Second World War. On April 9, 1941, he made an agreement with the Danish Minister for the occupation of Greenland by American forces. In May 1941, Roosevelt issued a proclamation declaring unlimited national emergency, and he ordered American naval craft to sink on sight foreign submarines found in the defensive waters of the United States.

In July 1941, the President announced that U.S. Forces would occupy Iceland in order to relieve British forces there, and that the Navy would perform convoy duty for supplies being sent to Great Britain under lend-lease. In September 1941, Roosevelt stated that he had given orders to the U.S. Army and Navy to strike first at any German or Italian vessels of war in American "defensive waters;" the following month, he decided to carry 20,000 British troops from Halifax to the Middle East in American transports.

President Truman's decision in 1951 to send four U.S. divisions to Europe in discharge of the Nation's NATO commitment occasioned prolonged debate in Congress over his powers to take such action without congressional approval. Congress ultimately acquiesed in the President's action without actually resolving the question, and all of President Truman's successors have asserted and exercised similar authority.

AUTHORITY TO CONDUCT OR CARRY ON ARMED CONFLICT ONCE IT HAS BEEN LAWFULLY INSTITUTED

It has never been doubted that the President's power as Commander in Chief authorizes him, and him alone, to conduct armed hostilities which have been lawfully instituted. Chief Justice Chase, concurring in *ex parte Milligan*, 4 Wall. 2, at 139, said:

> Congress has the power not only to raise and support and govern armies but to declare war. It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and conduct of campaigns. That power and duty belong to the President as Commander in Chief.

In the First World War, it was necessary to decide whether U.S. troops in France would fight as a separate command under General Pershing, or whether U.S. divisions should be incorporated in existing groups or armies commanded by French or British generals. President Wilson and his military advisers decided that U.S. forces would fight as a separate command.

In the Second World War, not only similar military decisions on a global scale were required, but also decisions that partook as much of political strategy as they did of military strategy. Should the United States concentrate its military and material resources on either the Atlantic or Pacific fronts to the exclusion of the other, or should it pursue the war on both fronts simultaneously? Where should the reconquest of allied territories in Europe and Africa which had been captured by the Axis powers begin? What should be the goal of the Allied powers? Those who lived through the Second World War will recall without difficulty, and without the necessity of consulting works of history, that this sort of decision was reached by the allied commanders in chief, and chief executive officers of the allied nations, without—on the part of the United States—any formal congressional participation. The series of conferences attended by President Roosevelt around the world—at Quebec, Cairo, Casablanca, Tehran, Yalta, and by President Truman at Potsdam, ultimately established the allied goals in fighting the Second World War, including the demand for uncon-

ditional surrender on the part of the Axis nations.

Similar strategic and tactical decisions were involved in the undeclared Korean war under President Truman. Questions such as whether U.S. forces should not merely defend South Korean territory, but pursue North Korean forces by invading North Korea, and as to whether American Air Force planes should pursue North Korean and Chinese Communist planes north of the Yalu River, separating Red China from North Korea, were of course made by the President as Commander in Chief without any formal congressional participation.

It is clear that the President, under his power as Commander in Chief, is authorized to commit American forces in such a way as to seriously risk hostilities, and also to actually commit them to such hostilities, without prior congressional approval. However, if the contours of the divided war power contemplated by the framers of the Constitution are to remain, constitutional practice must include presidential resort to Congress in order to obtain its sanction for the conduct of hostilities which reach a certain scale. Constitutional practice also indicates, however, that congressional sanction need not be in the form of a declaration of war.

In the case of the Mexican War, which was brought about, if not initiated, by President Polk, he requested and obtained a declaration of war. Congress, meeting in 1861 pursuant to the call of President Lincoln, ratified all of the actions he had taken on his own initiative, and apparently refrained from declaring war on the Confederate States only because it did not wish to recognize them as a sovereign nation.

However, the Fifth Congress authorized President Adams to take certain military action against France without going so far as to declare war. More recently, in connection with President Eisenhower's landing of troops in Lebanon and with the Cuban missile crisis in 1962, Congress has given advance authorization for military action by the President without declaring war—71 Stat. 5; 76 Stat. 697.

The notion that such advance authorization by Congress for military operations constitutes some sort of an invalid delegation of congressional war power simply will not stand analysis. A declaration of war by Congress, is, in effect, a blank check to the Executive to conduct military operations to bring about subjugation of the nation against whom war has been declared. The idea that while Congress may do this, it may not delegate a lesser amount of authority to conduct military operations, as was done in the instances referred to above, is utterly illogical and unsupported by precedent. While cases such as *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935), hold that Congress in delegating powers to deal with domestic affairs must establish standards for administrative guidance, no such principle obtains in the field of foreign affairs. The Supreme Court in *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, made this distinction clear.

What must be regarded as the high-water mark of Executive action without express congressional approval is, of course, the Korean war. Although Congress never expressly sanctioned the President's action in committing U.S. forces by the hundreds of thousands to the Korean conflict, it repeatedly voted authorizations and appropriations to arm and equip the American troops. This is not to say that such appropriations are invariably the equivalent of express congressional approval; the decision as to whether limited hostilities, commenced by the Executive, should be sanctioned by Congress may be one quite different from the decision as to whether American troops already committed and engaged in such hostilities shall be equipped and supplied.

CONGRESSIONAL POWER TO RESTRICT THE PRESIDENT

While the President may commit Armed Forces of the United States to hostile conflict without congressional authorization under his constitutional power as Commander in Chief, his authority exercised in conformity with congressional authorization or ratification of his acts is obviously broader than if it stood alone. By the same token, Congress undoubtedly has the power in certain situations to restrict the President's power as Commander in Chief to a narrower scope than it would have had in the absence of legislation. Chief Justice Marshall strongly intimates in his opinion in *Little* v. *Barreme*, 2 Cranch. 1970 (1804), that the Executive action directing the seizure of a ship on the high seas would have been valid had not Congress enacted legislation restricting the circumstances under which such a seizure was authorized. Congress, exercising its constitutional authority to "make rules concerning captures on land and water" may thus constrict the President's power to direct the manner of proceeding with such captures.

Congress has similarly sought to restrain the authority of the President in the exercise of its power to "raise and support armies." In the Selective Service and Training Act of 1940, it was provided that:

> Persons inducted into the land forces of the United States under this act shall not be employed beyond the limits of the Western Hemisphere except in the territories and possessions of the United States, including the Philippine Islands. 54 Stat. 885.

In the year following enactment of this law, President Roosevelt determined to send U.S. troops, including draftees, to Iceland in order to relieve British troops garrisoned there. He chose to strain geography, rather than the law and obtained the opinion of what was apparently a minority-view geographer that Iceland was actually in the Western Hemisphere.

On December 15, 1969, Congress adopted an amendment to the Defense Appropriations bill H.R. 15090 providing that U.S. Forces shall not be dispatched to Laos or Thailand in connection with the Vietnam conflict. It supported this provision offered by the Senator from Idaho as a reasonable exercise of congressional authority.

This is not to say, however, that every conceivable condition or restriction which Congress may by legislation seek to impose on the use of American military forces would be free of constitutional doubt. Even in the area of domestic affairs where the relationship between Congress and the President is balanced differently than it is in the field of external affairs, virtually every President since Woodrow Wilson has had occasion to object to certain conditions in authorization legislation as being violative of the separation of powers between the executive and the legislative branch. The problem would be compounded should Congress attempt by detailed instructions as to the use of American forces already in the field to supersede the President as Commander in Chief of the Armed Forces. Surely this is the thrust of Chief Justice Chase's concurring opinion in *ex parte Milligan*, quoted earlier.

> [Congressional Power] necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and conduct of campaigns. That power and duty belong to the President as Commander in Chief. 4 Wall. at 139.

THE VIETNAM CONFLICT

The duration of the Vietnam conflict and its requirements in terms of both men and materiel would have raised the most serious sort of constitutional question, had there been no congressional sanction of that conflict. However, as is well known, the conflict formally began following an attack on U.S. naval forces in the Gulf of Tonkin in August 1964. At that time, President Johnson took direct air action against the North Vietnamese, and he also requested Congress "to join in affirming the national determination that all such attacks will be met" and asked for "a resolution expressing that support of the Congress for all necessary action to protect our Armed Forces and to assist Nations covered by the SEATO treaty."

On August 10, 1964, Congress passed the so-called Gulf of Tonkin resolution. I ask unanimous consent that the text of this resolution, 78 Stat. 384 (1964), be printed at this point in the RECORD.

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

SOUTHEAST ASIA RESOLUTION [1]

> Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and
>
> Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and
>
> Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in

[1] Text of Public Law 88-408 [H.J. Res. 1145], 78 Stat. 384, approved Aug. 10, 1964. Department of State Bulletin, Aug. 24, 1964, pp. 272-274.

peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repeal any armed attack against the forces of the United States and to prevent further aggression.

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Mr. DOLE. In connection with this resolution, Congress noted that whatever the limits of the President's authority acting alone might be, whenever Congress and the President act together, "there can be no doubt" of the constitutional authority.

Since that time, Congress repeatedly adopted legislation recognizing the situation in Southeast Asia, providing the funds to carry out U.S. commitments there, and providing special benefits for troops stationed there. By virtue of these acts, and the Gulf of Tonkin resolution, there was longstanding congressional recognition of a continuing U.S. commitment in Southeast Asia. This recognition and ratification of the President's policies continued even after the Tonkin Gulf resolution was repealed in 1970.

While seeking a negotiated peace and furthering "Vietnamization," President Nixon continued to maintain U.S. troops in the field in South Vietnam. The legality of the maintenance of these troops in South Vietnam, and their use to render assistance to the South Vietnamese troops in repelling aggression from the Vietcong and the North Vietnamese, would have been subject to doubt only if congressional sanction of hostilities commenced on the initiative of the President could be manifested solely by a formal declaration of war. But the numerous historical precedents previously cited militate against such reasoning.

A requirement that congressional approval of Presidential action in this field can come only through a declaration of war is not only contrary to historic constitutional usage, but as a practical matter would curtail effective congressional participation in the exercise of the shared war power. If Congress may sanction armed engagement of U.S. forces only by declaring war, the possibility of its retaining a larger degree of control through a more limited approval is foreclosed. While in terms of men and materiel the Vietnam conflict was one of large scale, the objectives for which the conflict was carried on were by no means as extensive or all-inclusive as would have resulted from a declaration of war by Congress.

Conversely, however, there was not the slightest doubt from an examination of the language of the Gulf of Tonkin resolution that Congress expressly authorized extensive military involvement by the United States. To reason that if the caption "Declaration of War" had appeared at the top of the resolution, that involvement would have been permissible, but that the identical language without such a caption did not give effective congressional sanction, would be to treat this most nebulous and ill-defined of all areas of the law as if it were a problem in common law pleading. Mr. Justice Grier, more than a century ago, in the prize cases said:

> This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptise it with a name; and no name given to it by him or them could change the fact.

If substance prevailed over form in establishing the right of the Federal Government to fight the Civil War in 1861, substance should equally prevail over form in recognizing congressional sanction for the Vietnam conflict by the Gulf of Tonkin resolution, even though it was not in name or by its terms a formal declaration of war.

SEPARATE AND SHARED AUTHORITY

Mr. President, I believe the foregoing discussion indicates that a significant body of practice, precedent and tradition has grown up surrounding the war powers of this country. It shows that the President is charged with real responsibilities in major areas where he and he alone must make decisions and choices. It also shows that the Congress, too, has a proper, legitimate role to play with its own unique and separate authority. There are some clear lines of demarcation and firm divisions of authority.

Of course, the Congress cannot and should not become involved in the tactics and strategy required to carry out national defense policy. And at the same time the President cannot and should not seek to determine that national defense policy solely on his own initiative.

But between these firm and clear areas there is room and a real need for shared decisionmaking and joint leadership. And in my view the War Powers Act before the Senate today is a responsible and necessary attempt to serve the national interest by harmonizing the roles of the legislative and executive branches in the exercise of the war power.

PREVIOUS SUPPORT FOR WAR POWERS ACT

When this measure was first introduced in the 91st Congress in 1970, I joined in sponsoring it. At that time I felt it was a proper and useful attempt by Congress to cast some light in a murky and misunderstood constitutional area. It was reintroduced in the 92d Congress in 1971; however, at that time, we were in the midst of the Vietnamization program, efforts were continuing to reach a negotiated settlement to the Vietnam conflict, and we were still unable to secure information about or the return of our prisoners of war and missing in action.

CONCERN FOR MISCONSTRUCTION OF CONGRESSIONAL ACTION

At that time I felt a genuine concern that an entirely appropriate and useful exercise of the Congress powers in attempting to define the lines of constitutional authority might be misconstrued by the opposite side at the Paris negotiations, and thus endanger the prospects for achieving a negotiated peace and the earliest possible end to the conflict in Southeast Asia. Therefore, I did not rejoin my colleagues in sponsoring this legislation at that time.

Happily, the Vietnam war is now behind us. American forces have been withdrawn. Our prisoners are home. The Paris agreements establish our rights to information on the missing. And there is a real prospect that the Vietnamese parties will be able to arrive at a peaceful determination of their future course. On August 15, barring further congressional authorization, the bombing in Cambodia will stop.

CONCLUSION

This is a unique moment in our history, and it is an appropriate interval for Congress to assert its authority in a proper, constructive, and worthwhile manner.

The War Powers Act will establish a partnership between the Congress and the Presidency in exercising the awesome responsibility of employing this Nation's military might. It should serve to stimulate broader communication between the legislative and executive branches. And in so doing it will serve as a strong unifying influence in a nation which in recent years has too frequently been strained by forces of division, discord, and mistrust between the branches of Government, between groups and among individuals.

I am pleased to support this legislation and believe its passage will mark a proud and hopeful day in the constitutional history of the United States.

WAR POWERS: NOW IS THE TIME

Mr. MONDALE. Mr. President, I support the war powers bill, S. 440. I wish to commend Senators JAVITS, EAGLETON and STENNIS for their thoughtful judgment, scholarly precision, and constitutional expertise in producing such a landmark piece of legislation. Years of conscientious discussion, extended committee hearings, and lengthy congressional debate on the subject of war powers are evident in this bill, and I am pleased to be a cosponsor.

The bill comes to the floor once again with wide support and cosponsorship. It

is a bipartisan, nonideological attempt to restore the constitutional balance of power between Congress and the President, not to alter it. It is appropriate that the war powers bill has such consensus, for warmaking decisions involve both political parties in the most profound kind of bipartisanship.

Both the Senate and the House have previously debated—and passed—the War Powers Act, but were unable to reach agreement in conference. The House passed a similar bill which I hope will mean that the two bodies can finally agree to a piece of legislation.

But simply by debating this legislation, much has already been accomplished in recognizing a more precise and more demanding standard of judgment for Congress and the Executive must apply to the use of our Armed Forces. This debate signals congressional intent to take up its delegated responsibility to control the commitment of U.S. military forces. It indicates that the constitutional imbalance resulting from the unilateral expansion of Presidential power in the warmaking field over the past 25 years will at last be corrected.

During this debate, there is one theme which stands out in my own mind—that there is something very wrong with the way Presidents have committed American military forces over the past 25 years. Presidents have usurped congressional power, but only because Congress has placed too much confidence in the Executive. Congress has acquiesced and accepted various Presidential rationalizations and, therefore, must share part of the blame for our involvement in the Dominican Republic, Vietnam, Cambodia, and Laos. But the lack of prior consultation with the Congress in all of these commitments, as well as the recently revealed series of secret military activity in Cambodia cloaked in the name of "national security," makes it imperative that Congress assert its legitimate constitutional authority. For there is no longer any doubt that a constitutional crisis over warmaking powers now exists. If we fail to pass this legislation now, in the aftermath of the most graphic example of the excesses of individual warmaking, we may be sanctioning future Cambodias.

As Alexander M. Bickel of Yale University, one of the country's great constitutional authorities, testified before the Foreign Relations Committee on July 26, 1971 with regard to the Vietnam war:

> The decisions of 1965 may have differed only in degree from earlier stages in this process of growth. But there comes a point when a difference of degree achieves the magnitude of a difference of kind. The decisions of 1965 amounted to all but explicit transfer of power to declare war from Congress, where the Constitution lodged it, to the President, on whom the framers explicitly refused to confer it.

The war powers bill corrects the basic flow of the post-World War II practice toward Presidential wars by reestablishing the balance outlined in the Constitution so that Congress will decide whether and when this Nation goes to war.

In a telegram yesterday to Minority Leader GERALD R. FORD, the President threatened to veto the proposed legislation because it would restrict the President's authority to act in the national interest in time of emergency. Yet the bill in no way impairs the President's authority as Commander in Chief to repel attacks upon the United States or its Armed Forces, while it assures that Congress maintains its warmaking authority over the unchecked, unilateral decisions of the President. As the Committee on Foreign Relations stated in the report on the war powers bill,

> In brief, the Constitution gave Congress the authority to take the nation into war, whether by formal declaration of war or by other legislative means, and the President the authority to conduct it.

Section 3 of the bill defines the emergency conditions or circumstances under which, in the absence of a congressional declaration of war, the Armed Forces of the United States "may be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances." The emergency powers of the President, as intended by the Founding Fathers and as confirmed by subsequent historical practice and judicial precedent, are codified.

If the President takes emergency action committing the armed forces in hostilities, he must immediately make a full report of the circumstances, authority for, and expected scope and direction of the military measures he has initiated. If the President is unable to obtain the concurrence to extend his authority, he must terminate his action at the end of 30 days. This will prevent Presidents from undertaking military adventures contrary to the wishes of the American people.

At the Constitutional Convention, the Founding Fathers, sensitive to the warmaking powers of the British kings, were explicit in their desire that the power to declare war and to raise armies be left to the legislature, with the President acting as Commander in Chief after the onset of hostilities. They intended that no single man, no matter how benevolent, could take this Nation to war.

As Jefferson stated in his famous letter to Madison in 1789:

> We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.

In the early years of the Republic, Presidents acknowledged and carefully respected the war power of Congress. President Madison said that the question of "opposing force to force" was one "which the Constitution wisely confided to the legislative department of the Government."

Daniel Webster, while serving as Secretary of State, said:

> The war making power in this Government rests entirely in Congress; . . . the President can authorize belligerent operations only in the cases expressly provided for in the Constitution and the laws.

Abraham Lincoln expressed his viewpoint on the matter in his protest over the Mexican War while he was a Member of Congress:

> The provision of the Constitution giving the warmaking 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 undertook 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 this oppression upon us.

The deception, secrecy, ambiguity of the Indochina experience have made the American people determined that there shall be no future undeclared wars initiated by Presidents and prosecuted without clear-cut national support.

During hearings on the war powers in 1971, Prof. Henry Steele Commager made the following statement:

> Now after twenty years marked by repeated, and almost routine, invasions by the Executive of the warmaking powers assigned by the Constitution to Congress, we can see that more is at stake even than the Constitutional principle of the separation of powers. At stake is the fate of the age-long effort of men to fix effective limits on government; at stake is the reconciliation of the claims of freedom and of security; at stake is the fateful issue of peace or war, an issue fateful not for the American people alone, nor alone for the stricken peoples of Southeast Asia, but for the whole of mankind.

Mr. President, this bill will do much to restore the faith of the American people in both the Congress and the Executive that war policies are not being conducted in clandestine remoteness, but openly within the spirit of this Nation's Constitution.

SENATOR RANDOLPH RECALLS MISLEADING STATEMENTS DURING DEBATE ON WAR POWERS BILL IN 1942

Mr. RANDOLPH. Mr. President—

> Our people want authentic information. They know not what to believe.

These words are certainly relevant in the context of today's discussion of S. 440 and in light of the fact that administration officials in 1971 and 1973 falsified reports to the Senate Armed Services Committee of bombing operations in Cambodia.

I initially made that statement on February 28, 1942, in the House of Representatives during debate on House Joint Resolution 89 of the 76th Congress. This measure, sponsored by Representative Ludlow and Senator Capper, gave Congress the initial decisionmaking to take the power of declaring war "to the people of the United States," except in a case of an invasion of our country or territorial possessions by a military expedition.

I cosponsored this war referendum bill in 1939 and 34 years later I urge passage of S. 440, the War Powers Act of 1973. I quote Senator JAVITS:

> And when the President's authority is so defined, as it will be if the War Powers

Act becomes law, then the issue of authority is determined in an authoritative way, and, I have little doubt, will be carried out to the best of his ability in good faith by any American President.

I strongly support this historic and necessary legislation. Mr. President, I ask unanimous consent that my remarks and colloquy with other members, on the War Powers Act of 1942, be printed in the RECORD.

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

Mr. Chairman, I rise at this time during debate on the pending war-powers bill not because what I shall say particularizes on any point which we are now discussing, but because I desire to call attention to what I believe is a very unfortunate and unnecessary situation.

There are far too many announcements being made by our Departments of War and Navy to the American people and to the world which are contradictory and give rise to uneasiness among our citizens and encourage our enemies. I recognize full well that carping criticism of the war effort is undesirable. I would never add my voice to such procedure. In my opinion, however, when a Member of this Congress has a deep feeling regarding our war effort and believes that out of honest discussion there can come truth and light, that Member must never hesitate to make his views known. Thought-provoking criticism, based on a genuine conviction, must be welcomed in this House, rather than discouraged.

I direct your attention to the fact that 3 days ago the Secretary of the Navy announced that the reported attack on the west coast was false and that there were no enemy aircraft approaching from the ocean over California. Less than 24 hours later the Secretary of War made an announcement that the alarm was real. Within a few hours we have the Secretary of the Navy saying the reported raid was false and the Secretary of War saying the supposed attack was real. What are we to believe? It is inconceivable that we continue to have such stories circulated from official sources.

If we are to have clear thinking on the part of the American people in regard in the prosecution of this war, it must stem from the military authorities themselves. How we can expect other than confusion among the patriotic citizens of the United States when such opposing announcements as this are made is beyond my honest comprehension.

There are these of us who have advocated for many, many years that we should have in this country one supreme command and under that command separate authorities for the Army, the Navy, and the Air Force. However, we have been denied even the opportunity to have such legislation heard before the committees of this Congress. I do not wish to discuss that question this afternoon. I have taken time to direct attention of the Congress on previous occasions to failure of our committees to hear discussed in an informative and straight-forward manner such proposals which have been made by the Members of this body.

Mr. REED of New York. Mr. Chairman, will the gentleman yield?

Mr. RANDOLPH. I yield to the gentleman from New York.

Mr. REED of New York. I do not know what the experience of the gentleman or of my colleagues has been, but I am receiving letters wanting to know if this statement or that statement made by different officials is true, and I am not in a position to tell these people what the truth is.

Mr. RANDOLPH. Of course not. Our people want authentic information. They know not what to believe. For the Secretary of the Navy to say one day that the trouble on the west coast was false and for the Secretary of War to say the next day that it was real is absolutely indefensible.

Mr. VOORHIS of California. Mr. Chairman, will the gentleman yield?

Mr. RANDOLPH. I yield to the gentleman from California.

Mr. VOORHIS of California. What concerns me about this matter is the people of our section.

Mr. RANDOLPH. Certainly, they are in the dark.

Mr. VOORHIS of California. They were pretty fine throughout this whole business. All in the world they want is a simple statement upon which they feel they can absolutely rely. I am confident they are going to get that, and I think it is very important that they do get it.

Mr. RANDOLPH. I thank the gentleman, and I join in the hope that a common ground on which we can stand can be soon found. The American people, if told the actual happenings, will always respond to the truth. They are not children. They are sober and understanding men and women.

Mr. HINSHAW. Mr. Chairman, will the gentleman yield?

Mr. RANDOLPH. I yield to the gentleman from California.

Mr. HINSHAW. In connection with the statement by the Secretary of War, may I say that I was told on the following day by three different sources in the War Department, not by the Secretary, that they did not believe it was necessarily enemy planes that came over the Los Angeles area. Then the Secretary of War came out and refuted the statements made by representatives of his own Department.

Mr. RANDOLPH. I am sorry these divergent and misleading statements have been made. If they were rumors I would not discuss them, but I have checked and have found that they were given to the press by the Secretary of the Navy and the Secretary of War. I call on our Commander in Chief to stop this unwarranted situation.

Mr. PELL. Mr. President, the power of waging war is the power of life and death over every man, woman and child in this country. It is a power, therefore, that the U.S. Government can only exercise with the greatest solemnity and care. It is for this reason that the framers of the Constitution desired to insure that the collective judgment of both the Congress and the President should be brought to bear in decisions to engage U.S. forces in hostilities or situations leading to them. Any use of force by one country against another is war, regardless of its size, or whether it is declared or undeclared. And in an age of nuclear weapons, the smallest war can escalate to nuclear annihilation.

In recent decades, this collective judgment called for by the Constitution has been increasingly imbalanced, with the Presidential input far outweighing the congressional. This disequilibrium has frustrated the intent of the drafters of the Constitution and embroiled the Nation in the longest, most devisive and agonizing war in our history.

At an earlier stage, a statutory remedy might have been unnecessary, but we have passed that stage. Congressional action is now overdue. I have long advocated such action in past legislation. I have decried congressional failure to take this action. Therefore, I now urge, more vigorously than ever, that this action be promptly taken by the passage of S. 440.

Failure by the Congress to exert its constitutional authority in the exercise of national war powers would be a failure to learn from the bitter experiences of the Indochina war. History may or may not show that the stand we took to resist North Vietnamese aggression in Indochina was the right one. But already it is abundantly clear that the way we choose to make that stand was a tragically mistaken one.

It was a mistake shared by both Republican and Democratic administrations. The source of the mistake is directly attributable to an absence of congressional input into the military policies that guided—or rather misguided our war effort in Indochina. The result was that we slipped into a protracted, costly war through the back door—a door opened up not by the people of the United States, not by their elected representatives in the Congress, but a door opened up primarily by the Pentagon.

If from the beginning of our military involvement, the Congress had exercised its constitutional war powers, our intervention could well have been of quite a different nature and results. There would have been congressional debate and public discussion of the necessity for intervention, so that if approved, the country would have had a clearer understanding of its purpose and objectives. But such was not the case.

If there had been a better understanding of the nature of the war, where the political factors outweighed the military ones, there would not have been the inappropriate massive military intervention pushed by the Pentagon.

If there had not been a massive deployment of forces using unsuitable sophisticated weapons and requiring an unwieldy infrastructure of bases and support facilities, our military presence would have had the mobility and nimbleness needed to complete its mission.

But the voice of Congress against the creation of a monstrous, lumbering, hamstrung war machine in Indochina could not be heard above the drumbeats of the Pentagon—a machine that devastated the countryside, that killed, maimed and alienated the people it should have protected and at the same time was incapable of dealing with an enemy as fluid as quicksilver.

How tragic that such a voice was not heard. How many lives could have been saved, military and civilian. How much destruction could have been spared, how much divisiveness at home and abroad could have been avoided. How much quicker and more successfully might we have obtained our objectives. If, however, Vietnam taught us one thing—the categorical imperative for the voice of Congress in the process of deciding on and applying American military force, regardless of place, size or nature, then the sacrifices of Vietnam will not have been entirely in vain.

Mr. MUSKIE. Mr. President, I ask for the yeas and nays on the passage of the bill.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, I yield back all my remaining time.

Mr. GRIFFIN. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time has been yielded back. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Mississippi (Mr. STENNIS), and the Senator from South Dakota (Mr. McGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) and the Senator from Arizona (Mr. GOLDWATER) are absent because of illness in their respective families.

The Senator from Alaska (Mr. STEVENS) is absent by leave of the Senate on account of illness in his family.

The Senator from New York (Mr. BUCKLEY), the Senator from Colorado (Mr. DOMINICK), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from Virginia (Mr. SCOTT) is absent on official business.

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from Colorado (Mr. DOMINICK). If present and voting, the Senator from Illinois would vote "yea" and the Senator from Colorado would vote "nay."

The result was announced—yeas 72, nays 18, as follows:

[No. 312 Leg.]

YEAS—72

Aiken	Hart	Nelson
Allen	Hartke	Nunn
Bayh	Haskell	Packwood
Beall	Hatfield	Pastore
Bentsen	Hathaway	Pearson
Bible	Hollings	Pell
Biden	Huddleston	Proxmire
Brock	Hughes	Randolph
Brooke	Humphrey	Ribicoff
Burdick	Inouye	Roth
Byrd, Harry F., Jr.	Jackson	Saxbe
	Javits	Schweiker
Byrd, Robert C.	Johnston	Scott, Pa.
Cannon	Kennedy	Sparkman
Case	Long	Stafford
Chiles	Magnuson	Stevenson
Church	Mansfield	Symington
Clark	Mathias	Taft
Cook	McGee	Talmadge
Cranston	McIntyre	Tunney
Dole	Metcalf	Weicker
Domenici	Mondale	Williams
Eagleton	Montoya	Young
Fong	Moss	
Fulbright	Muskie	

NAYS—18

Abourezk	Eastland	Hansen
Baker	Ervin	Helms
Bartlett	Fannin	Hruska
Bellmon	Gravel	McClure
Bennett	Griffin	Thurmond
Curtis	Gurney	Tower

NOT VOTING—10

Buckley	McClellan	Stennis
Cotton	McGovern	Stevens
Dominick	Percy	
Goldwater	Scott, Va.	

So the bill (S. 440) was passed, as follows:

S. 440

An act 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

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

SHORT TITLE

SECTION 1. This Act may be cited as the "War Powers Act".

PURPOSE AND POLICY

SEC. 2. It is the purpose of this Act to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces of the United States in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations after they have been introduced in hostilities or in such situations. Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof. At the same time, 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 is 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.

EMERGENCY USE OF THE ARMED FORCES

SEC. 3. In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances only—

(1) to repel an armed attack upon the United States, its territories and possessions; to take necessary and appropriate retalitory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack;

(2) to repel an armed attack against the Armed Forces of the United States located outside of the United States, its territories and possessions, and to forestall the direct and imminent threat of such an attack;

(3) to protect while evacuating citizens and nationals of the United States, as rapidly as possible, from (A) any situation on the high seas involving a direct and imminent threat to the lives of such citizens and nationals, or (B) any country in which such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control; but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States and shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country; or

(4) pursuant to specific statutory authorization, but authority to introduce the Armed Forces of the United States in hostilities or in any such situation shall not be inferred (A) from any provision of law hereafter enacted, including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act, or (B) from any treaty hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act. For purposes of this clause (4), "introduction of the Armed Forces of the United States" include the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities. No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause (4); and no provision of law in force at the time of the enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

REPORTS

SEC. 4. The introduction of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act shall be reported promptly in writing by the President to the Speaker of the House of Representatives and the President of the Senate, together with a full account of the circumstances under which such Armed Forces were introduced in such hostilities or in such situation, the estimated scope of such hostilities or situation, and the consistency of the introduction of such forces in such hostilities or situation with the provisions of section 3 of this Act. Whenever Armed Forces of the United States are engaged in hostilities or in any such situation outside of the United States, its territories and possessions, the President shall, so long as such Armed Forces continue to be engaged in such hostilities or in such situation, report to the Congress periodically on the status of such hostilities or situation as well as the scope and expected duration of such hostilities or situation, but in no event shall he report to the Congress less often than every six months.

THIRTY-DAY AUTHORIZATION PERIOD

SEC. 5. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act shall not be sustained beyond thirty days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless (1) the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of Armed Forces of the United States engaged pursuant to section 3(1) or 3(2) of this Act requires the continued use of such Armed Forces in the course of bringing about a prompt disengagement from such hostilities; or (2) Congress is physically unable to meet as a result of an armed attack upon the United States;

or (3) the continued use of such Armed Forces in such hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof.

TERMINATION WITHIN THIRTY-DAY PERIOD

SEC. 6. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act may be terminated prior to the thirty-day period specified in section 5 of this Act by an Act or joint resolution of Congress, except in a case where the President has determined and certified to the Congress in writing that unavoidable military necessity respecting the safety of Armed Forces of the United States engaged pursuant to section 3(1) or 3(2) of this Act requires the continued use of such Armed Forces in the course of bringing about a prompt disengagement from such hostilities.

CONGRESSIONAL PRIORITY PROVISIONS

SEC. 7. (a) Any bill or joint resolution authorizing a continuation of the use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act, or any bill or joint resolution terminating the use of Armed Forces of the United States in hostilities, as provided in section 6 of this Act, shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it is introduced, be considered reported to the floor of such House no later than one day following its introduction unless the Members of such House otherwise determine by yeas and nays. Any such bill or joint resolution, after having been passed by the House of Congress in which it originated, shall be considered reported to the floor of the other House of Congress within one day after it has been passed by the House in which it originated and sent to the other House, unless the Members of the other House shall otherwise determine by yeas and nays.

(b) Any bill or joint resolution reported to the floor pursuant to subsection (a) or when placed directly on the calendar shall immediately become the pending business of the House in which such bill or joint resolution is reported or placed directly on the calendar, and shall be voted upon within three days after it has been reported or placed directly on the calendar, as the case may be, unless such House shall otherwise determine by yeas and nays.

SEPARABILITY CLAUSE

SEC. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE AND APPLICABILITY

SEC. 9. This Act shall take effect on the date of its enactment. Nothing in section 3(4) of this Act shall be construed to require any further specific statutory authorization to permit members of the Armed Forces of the United States to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this Act and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

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

Mr. MUSKIE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 320, House Joint Resolution 542.

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

The Senate proceeded to consider the joint resolution (H.J. Res. 542) concerning the war powers of Congress and the President.

Mr. MUSKIE. Mr. President, I move to strike all after the resolving clause of House Joint Resolution 542 and substitute therefor the text of S. 440, as amended and passed today.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Maine.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the joint resolution.

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

The joint resolution (H.J. Res. 542) was read a third time and passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. MUSKIE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I should like to take a moment to congratulate the distinguished Senator from New York (Mr. JAVITS) for one of the most masterful pieces of legislative craftsmanship that it has been my pleasure and my privilege to be associated with. He has done an outstanding job in the service of the Senate and the country, and I congratulate him.

Mr. JAVITS. Mr. President, if the Senator will yield, I greatly appreciate the job Senator MUSKIE undertook. It required him to absorb literally months of work and study, which I have done and others have done, including some very complicated legal questions and constitional questions. He simply astounded me with the skill and grasp he showed in connection with this bill. I am very grateful to him. The Senate has every reason to be grateful to him. He has done the Foreign Relations Committee proud.

Mr. MUSKIE. I thank the Senator.

Mr. JAVITS. Mr. President, I wish to express my appreciation to a number of assistants of my own and of the Foreign Relations Committee, who rendered extraordinary help in respect to the bill.

I would like to thank Peter Lakeland of my own staff, a former Foreign Service officer and a very gifted foreign policy assistant to me for some years, who did a monumental job, which any professional would consider a life's work, in the preparation for this debate, the drafting of the committee report, and the research, all of which went with it.

Then to Seth Tillman, who is one of the assistants to Senator FULBRIGHT, who had a big hand in drafting the committee report, which I thought was a magnificant document; and Mr. Tillman worked under the direction of Carl Marcy, the very honored and very much respected chief of staff of our committee, to whom I also wish to give every credit for bringing the matter to the floor and for the preparation on it.

THE USE OF RECORDING DEVICES

Mr. CURTIS. Mr. President, I wish to speak concerning the use of recording devices. This was brought to the attention of the Nation during the past week by the testimony given by a Senate committee concerning records made by the White House in the last couple of years. There may be arguments pro or con concerning the wisdom of such recordings but it is important that first we clear up a few essential points.

It is lawful for an individual to wiretap his own telephone without notifying the other person on the line and without the use of a beeper. The statements made about the records in the White House revealed a practice which is not in violation of present law. It was not undertaken by the Nixon administration under the old law.

The second point I would like to establish is that similar recordings have been made in the White House under previous administrations. It is not a new practice at all. It has been widely used in the past and I will have something to say about that later. Much can be said in favor of recording conferences, conversations, and discussions. It makes for an accurate record. It prevents error taking the place of a history of the true facts. It avoids misunderstanding. It makes it possible for a followthrough after discussion in full conformity with what was said.

I can recall a visit that I made to the White House early in the Nixon administration concerning rural development. There were one or two staff members in the room and they were very busy taking notes of everything that President Nixon or I said. I was delighted that they were making such a record. That particular discussion is reflected in the rural development program that is now in operation. Important matters were talked about and the fact that a record was kept by the making of notes made it possible for the President's wishes to be carried out. A record preserved by a recording would have saved time and may have been more accurate.

I wanted to satisfy myself as to the practices by previous administrations concerning the recording of conversations, conferences, and telephone calls. I had understood that the White House had collected evidence on this in the form of affidavits. I asked to see those affidavits. I did see them and I read them.

One affidavit that I saw stated that the individual in 1968 was ordered to install a microphone in a small room located between the Oval office of the President and the office of Mr. Marvin Watson. The room, I understand, was used as a Presidential sitting room and used frequently by President Johnson for private meetings and the like.

The affidavit went on to say that a listening device had been installed in the south wall of the room at the baseboard level. A tape recorder was installed in

an office below this room and was manually controlled from a switch located under the shelf that supported a portable TV set. The affidavit stated that this equipment was removed at the end of the Johnson administration.

A second affidavit which was shown me at my request reported that the individual knew that there were in existence between 1965 and 1969 facilities whereby the President or designated members of the White House staff could record telephone conversations by the simple act of pushing a button on the telephone or throwing a separate switch which would activate a recording device.

The affidavit said that either at the end of each day or when the recording belt or tape was completed, the recording would be removed and presented to the secretary of the office concerned. Recordings were transcribed by secretaries in the White House staff as directed by the office in which the recorders were installed. The affidavit said that recorders were installed or available on selected telephone lines in the office of the President and the office of his appointment secretary.

It said, in addition, the same capability was available at Camp David, the main ranch house at the L.B.J. Ranch in Texas, and the Presidential offices in the Federal Office Building in Austin, Tex. I recall one sentence that said: "These recorders were not equipped with any warning devices."

In addition, the affidavit stated that the conference table in the Cabinet Room at the White House contained hidden microphones which could be activated at the conference table. The individual stated in his affidavit that in January 1969, President Johnson personally directed him to remove all recording devices from the Cabinet Room and from all telephones.

What I had said about tapping telephone conversations or conversations relates to a person wiretapping his own telephones, a telephone subject to his control. Tapping the wires of somebody else's telephone, of course, is something altogether different. Recently I observed in the news, Vice President AGNEW speaking of an experience he had in Santa Fe, N. Mex.

I have the transcript of the news account concerning this happening. I want to read from the transcript of the newscast of Kurt Lohbeck given at 7:05 a.m. on June 28, 1973. Lohbeck said:

Former New Mexico Governor David Cargo has stated that in 1968 while Spiro Agnew was visiting him at the Governor's Mansion in Sante Fe, he discovered all his private phone lines had been tapped.

Cargo made the statement in light of denials by assistants to the late President Johnson who said he never ordered the bugging.

Then followed the words of Gov. David Cargo of New Mexico who said:

Governor, then Governor Agnew, and presently Vice-President Agnew, had been our guest in Santa Fe prior to his campaign appearance in New Mexico. In fact, at that time the Governor's office was bugged, the telephones were tapped, we called the . . . both the FBI, we had contacted them, finally, we contacted the telephone company, they came in and debugged the whole system, they were in fact bugged . . . and who installed them? We don't know . . . we were unable to discover it . . . but they were bugged, very definitely bugged, we had to install devices to shield it, we had to put exclusion systems into all of our phones.

Lohbeck went on to say Cargo states the phone taps were not discovered until after AGNEW left the Governor's Mansion. The transcript of the broadcast of Lohbeck at 8:05 a.m. on June 28, 1973, said: Former New Mexico Gov. David Cargo has confirmed some reports originating from the Watergate Investigating Committee concerning taps on the phone conversations of SPIRO AGNEW, then candidate for Vice President in 1968. Cargo says he notified the FBI, who told him to contact the phone company, which he did. The phone company then found numerous taps, and installed an exclusion system to prevent such wiretapping. Cargo says he told AGNEW of the taps, but at the time not much attention was given to them.

Lohbeck went on to say reports in Washington indicate that the Johnson administration had ordered logs of AGNEW's phone calls.

Mr. President, the account of this recent lawful recording system used by the White House was presented by a Senate Committee as a part of the Watergate television program. I am sure that millions of Americans got the idea that what took place in the White House was in violation of law. That was not the case at all. Can it be that anything is presumed to be revelant to this investigation if it can be used to damage the President?

If a committee of the Congress having jurisdiction believes that the present law should be changed with respect to placing recording devices on one's own phone, they should advance such legislation for the consideration of the whole Congress. It is not right to portray lawful actions in a way which leads the public to believe that they are in violation of the law.

Mr. President, in 1969 I did uncover a case of wiretapping which was clearly unlawful. The offenders were some bureaucrats in the General Services Administration. The man whose telephone was tapped was a sightless young lawyer. He was involved in the handling of matters concerning contract settlements. Information carried over his telephone could have been of great value to contractors and others.

It is to the credit of Robert Kunzig, then Administrator of the General Services Administration, that he put a stop to the practice.

Mr. President, if the committee conducting the Watergate hearings wishes to go into the question of wiretapping, they should do so thoroughly. They should establish what the past practices are and, above all, they should investigate those wiretaps which are clearly unlawful, such as the wiretapping of Vice President AGNEW and the wiretapping that took place in the GSA back in 1969.

Mr. President, I ask unanimous consent to have reprinted my statement of July 11, 1969, concerning wiretapping in the GSA.

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

[From the CONGRESSIONAL RECORD, July 11, 1969]

ILLEGAL ELECTRONIC EAVESDROPPING IN THE FEDERAL GOVERNMENT

Mr. CURTIS. Mr. President, today I am going to disclose, with proof, the existence of illegal electronic eavesdropping in at least one large Government agency. There is added evidence that this same electronic snooping is going on in other agencies of the Federal Government.

This malodorous practice started under the previous administration and was so widespread that it has been impossible to root out in the 6 months that the Nixon administration has been in office. I hope my disclosures today will speed the process.

I think it is a fair statement that a Federal agency cannot, without notifying either employees or caller, listen in on telephone conversations where national security is not involved. To do so, I believe, is a violation of law.

Seven States—California, Illinois, Maryland, Massachusetts, Nevada, New York, and Oregon—prohibit surreptitious eavesdropping by mechanical or electronic device.

Thirty-six States prohibit the specific type of eavesdropping known as wiretapping.

And Congress itself, in the enactment of title III of the Omnibus Crime Control and Safe Streets Act of 1968, outlawed all wiretapping and electronic eavesdropping other than that occurring within certain tightly drawn instances involving suspected organized criminal activity or the national security. In cases involving suspected syndicate crime, listening devices can be used only with court permission. Even in emergencies, court permission must be obtained within 48 hours or the listening device and its use are illegal.

Yet, I have here such a device, taken within the past few weeks from a telephone at a major Government agency. It was brought to my attention by a Government official whose own telephone was being monitored illegally. I have sworn affidavits from him recounting the whole story. But for his honest courage we would know nothing of this illegal activity.

The agency in question is the General Services Administration. I have already discussed this case with Administrator Robert Kunzig of GSA. He is entirely in agreement with me as to the illegality and impropriety of such electronic eavesdropping.

In fact, Mr. Kunzig, when he heard about the use of "snooper button" telephones and monitoring systems within GSA, was shocked. This was shortly after he became Administrator. He at once—on May 6—issued orders forbidding this practice which is both questionable as to ethics and illegal by law.

Someone in GSA apparently did not feel compelled to abide by the Administrator's orders.

I call attention to the fact that the actual discovery of the device I have here was made over a month after Mr. Kunzig's order prohibiting the use of what he termed "telephone monitoring." I further call attention to the fact that these devices were installed and in use prior to Mr. Kunzig's appointment as Administrator.

What I intend to do today is recount for you the shameful story in as straightforward and factual a manner as possible.

This Federal employee, a well-educated, responsible, professional person and, incidentally, highly knowledgeable in the field of electronics, states that many months ago—long before Mr. Kunzig took over under the Nixon administration—he became aware of "excessive electronic noise and a very slight decrease in power" on his telephone line.

Mr. President, I have no personal knowledge of what this sort of thing means.

However, I have consulted experts, and they tell me these are characteristics of a telephone where the distribution of sound and current serves more than two outlets being used by more than two parties in a telephone conversation.

In other words, these are the conditions that exist when a telephone conversation is being monitored by a third party.

On May 5, 1969, our Mr. X was informed by a fellow employee that there was "a listening post" on Mr. X's phone, and that it was then in operation. Another employee present at the time has sworn in an affidavit as to the truth of this conversation as reported.

The next day, May 6, 1969, a memorandum from Mr. X's superior was issued. It stated that the new Administrator, Mr. Kunzig, at a staff meeting on May 6, 1969, announced there was to be no more monitoring of phone calls.

This new policy, according to Mr. X, was transmitted to all offices in the agency. As Mr. X puts it:

"To my knowledge, the request to cease telephone monitoring constituted an attempt to stop the day-to-day practice of using the so-called 'snooper button'."

When asked to describe this "snooper button" system, a representative of the C. & P. Telephone Co. supplied, in writing, this summary:

"TRANSMITTER CUT-OFF

"As a key telephone system arrangement, the transmitter cut-off is a feature that enables the telephone user to cease transmismission of sound into the telephone without losing the capability of listening to the other person's conversation. Because of its monitoring nature, the installation and use of it has been highly discouraged by the General Services Administration."

According to Mr. X, these snooper buttons have been used in his office to monitor calls of employees to other persons in Government as well as persons outside the Government, without the knowledge of participants in the telephone calls.

Mr. X took no action in May about the information concerning a "listening post" on his phone, since the policy announced by Mr. Kunzig could be expected to end such snooping.

One month later, despite the Administrator's order, there was evidence that in certain offices telephone snooping was continuing. And there was no evidence that such devices had been removed from various telephones.

At this point, Mr. X decided to collect information on the extent of these illegal eavesdropping operations within GSA.

His determination to do so was reinforced by information given him on June 3, 1969, by a secretary to a high official in GSA.

She informed him that she had monitored telephone conversations in Mr. X's division during 1968, and in the division in which she was presently working. The monitoring was through use of the "snooper button." It was done by order of her superior. Finally, and most important and despicable, it was done without the knowledge of those whose phones were being monitored.

The next day, June 4, 1969, Mr. X received even more disturbing information. Another secretary formerly employed in the office of his superior informed him that at that superior's instruction she monitored every telephone call that came into his office.

Mr. CURTIS. Mr. President, the point to keep in mind is that this secretary operated a telephone which served all of the lines of all of the employees in that office. All calls coming in and going out of the office, regardless of by whom or to whom they were made, were wired through telephone equipment located on and near her desk.

Thereafter, on the same day, Mr. X discovered that in his office "snooper buttons" remained operable. Mr. X tested them personally for effectiveness, and took photographs of these installations.

For the information of Senators, I have pictures of these infamous snooping devices, in operation as of June 4, 1969.

Since then, Mr. X has talked with several employees in GSA and the Department of the Interior, who confirm the widespread, deliberate, systematic use of "snooper" devices over the past 2 years. In each case, employees were instructed by their superiors to monitor all calls, to take notes, and to make no disclosure of any kind that might make either party to the telephone conversation aware of such eavesdropping.

One more fact: I am sure it will be of interest to Senators to learn that this monitoring included calls from Members of Congress. In fact, one person charged with responsibility for taking notes on such telephone calls said she was specifically instructed to monitor calls from Representatives, Senators, Government officials, and others.

Again, let me point out to Senators that these telephone calls were being monitored without at least one participant, and in many cases both participants, knowing about it, and certainly without their permission.

As to the mechanics of setting up such snooper systems, the telephone company installed these devices at the request of GSA officials. I hope to find out who these officials were, whether they are still with GSA, and if not, what they are presently doing.

The General Services Administration is, after all, a quarter of a billion dollar agency, with almost 40,000 employees.

It lets annual contracts amounting to millions of dollars for the provision of supplies to the Government, and for 1970 alone, spent on the order of $100 million for the acquisition of new facilities.

Thus, there could well be an economic motive for this high level eavesdropping.

The only other possible motive is political at best, and since the facts point to intra-agency use, it seems more likely to be of the cheap, bureaucratic, gutter-fighting variety.

Equally obnoxious is the use of such "snoopers" simply to spy on subordinates, to deny them the privacy to which they are entitled. We have had too many examples of how Federal employee rights are invaded by peeping tom superiors.

It seems to me that both the Senate Government Operations Committee and the Senate Judiciary Committee should find this information of great interest and worth pursuing further.

There is a collateral issue that must be faced. As I have said, the telephone company installs such snooper devices, technically styled "transmitter cutoffs," although it does not advertise the service in its available promotional brochures. The general justification of such devices is that they allow a secretary on a third phone to take notes of a phone conversation between two parties, without the office noise intruding through her phone mouthpiece into the conversation between the principals. I could accept this, I suppose, if I had definite assurance that such devices would be used only in such a situation and, of course, with the full knowledge and consent of the two principals.

Instead, here we have a clear example of how ridiculously easy it is to convert these devices into eavesdroppers, little spies for crooks or paranoids who hope to profit one way or another by denying the honorable right of privacy to others.

I am coming rapidly to the conclusion that such "transmitter cutoffs," as they are euphemistically called, are far too tempting to the crook or the paranoid.

Mr. President, this type of eavesdropping and electronic snooping—where there is not the slightest pretext that the national security is involved—must stop. It must stop now, without equivocation or exception. I am convinced that the new administration wishes to reverse this proliferation of illegal eavesdropping devices throughout Government. I compliment Administrator Kunzig for making this a first order of business within the GSA. I commend his action to other Government agency heads. I could only wish that Mr. Kunzig's subordinates—many of them holdovers from a previous administration—had taken his orders to heart and halted the nefarious practice.

It seems to me, however, that the telephone company should take a long, hard, and careful look at its practice of installing such devices, in light of the misuse that can be made of them. They offer too easy a temptation for the users to turn them into electronic eavesdroppers with unlimited scope. I sincerely request the cooperation of the telephone company in changing this practice.

In closing, Mr. President, let me restate my case.

We know that there has been and apparently still is large-scale electronic snooping going on in one major U.S. agency, the General Services Administration. This is happening not only here in Washington but apparently in regional offices across the country as well.

There is evidence that it is going on in a major Government department—the Interior Department.

I ask, Mr. President, and I think all my colleagues are justified in asking the same question, how much further has this practice permeated our Government?

How many agencies and departments in which no national security is involved are in the habit of listening in on their employees' most private conversations?

I submit that this is a matter which the Justice Department should investigate—and at once. I submit further that our own Committees on Government Operations and the Judiciary should oversee such an inquiry by the Justice Department, to determine that this evil is brought to a complete and total halt.

Mr. President, to be specific, the General Services Administration let contracts, many of which, by the nature of them, cannot be competitive; they are negotiated. The individuals in places of power have been monitoring the conversations of their subordinates to find out what their subordinates know. Is that not an open invitation to corruption? It is a practice that should end.

Mr. President, I yield the floor.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that act, to expand the coverage of that act, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. THOMPSON of New Jersey, Mr. DENT, Mr. DOMINICK V. DANIELS, Mr. BURTON, Mr. GAYDOS, Mr. CLAY, Mr. BIAGGI, Mr. MAZZOLI, Mr. QUIE, Mr. ERLENBORN, Mr. HANSEN of Idaho, Mr. KEMP, Mr. SARASIN, and

Mr. HUBER were appointed managers on the part of the House at the conference.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 504) to amend the Public Health Service Act to authorize assistance for planning development, and initial operation, research, and training projects for systems for the effective provision of health care services under emergency conditions.

The PRESIDENT pro tempore subsequently signed the enrolled bill.

TEMPORARY EXTENSION OF CERTAIN HOUSING AND URBAN DEVELOPMENT LAWS AND AUTHORITIES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 233, House Joint Resolution 512, that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER (Mr. HELMS). The bill will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 512) to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes.

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

There being no objection, the Senate proceeded to consider the joint resolution, which had been reported from the Committee on Banking, Housing and Urban Affairs with amendments on page 2, after line 9, insert:

(2) The second sentence of subsection (1) of such section is amended by striking out "and by $200,000,000 on July 1, 1971" and inserting in lieu thereof "by $200,000,000 on July 1, 1971, and by $29,000,000 on July 1, 1973".

At the top of page 3, insert:

(j) Section 10(e) of the United States Housing Act of 1937 is amended by striking out "and $150,000,000 on July 1, 1972" and inserting in lieu thereof "$150,000,000 on July 1, 1972, and $140,000,000 on July 1, 1973".

On page 4, line 3, after the word "by", strike out "such additional sums on and after July 1, 1973, as may be necessary to make grants under this title up to the amounts approved in Acts making appropriations for the fiscal year ending June 30, 1974" and insert "$1,328,000,000 on July 1, 1973"; in line 9, after "(a)", strike out "Section" and insert "The first sentence of section"; in line 11, after the word "by", strike out "inserting after the first sentence the following new sentence: "In addition, there are authorized to be appropriated for such purpose such sums as may be necessary for the fiscal year ending June 30, 1974."." and insert "striking out "and not exceed $200,000,000 for the fiscal year ending June 30, 1972" and inserting in lieu thereof" not to exceed $200,000,000 for the fiscal year ending June 30, 1972, and not to exceed $232,500,000 for the fiscal year ending June 30, 1974."; on page 5 line 2, after the word "plus", strike out "such additional sums as may be necessary for such purposes" and insert "not to exceed $63,000,000"; in line 10, after "1973", strike out "such sums as may be necessary" and insert "not to exceed $40,000,000"; at the top of page 7, insert a new section, as follows:

TERMINATION OF FEDERAL HOUSING ASSISTANCE MORATORIUM

SEC. 13. (a)(1) The Secretary of Housing and Urban Development shall immediately cease any suspension of Federal housing assistance programs, or any withholding of funds for such programs, and shall carry out such programs in the current and each succeeding fiscal year to the full extent possible pursuant to the contract authority or other funds appropriated or otherwise authorized or made available by the Congress for such programs in each such fiscal year.

(2) The Secretary, in carrying out his responsibilities under this subsection, shall not withhold or delay the approval of applications for contracts under the Federal housing assistance programs, the entry into contracts under such programs, or the expenditure of funds appropriated for such programs. He further shall take no action which effectively precludes or delays the approval of applications for contracts for such programs, the entry into contracts for such programs, or the expenditure of funds appropriated for such programs.

(3) As used in this subsection, the term "Federal housing assistance programs" means the programs established under section 235 and section 236 of the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, title IV of the Housing Act of 1950, the United States Housing Act of 1937, and section 312 of the Housing Act of 1964.

(b)(1) Section 517(c) of title V of the Housing Act of 1949 is amended by (1) striking out the word "may" and inserting in lieu thereof the word "shall", and (2) inserting before the period at the end of the sentence a comma, and the words "in the amounts specified in the appropriations Acts for that purpose: *Provided*, That not less than 60 per centum of such loans in the aggregate be made at the reduced rates provided for under section 521 of this title".

(2) Section 516(a) of title V of the Housing Act of 1949 is amended by striking out the words "is authorized to" and inserting in lieu thereof the words "shall, in the amounts specified in the appropriations Acts for that purpose,".

And, on page 8, after line 15, insert a new section, as follows:

EXPENDITURES TO CORRECT OR COMPENSATE FOR SUBSTANTIAL DEFECTS IN FEDERAL HOUSING ADMINISTRATION INSURED MORTGAGED HOMES

SEC. 14. (a) The text of section 518 of the National Housing Act is amended to read as follows:

"SEC. 518. (a) The Secretary is authorized, with respect to any property improved by a one- to four-family dwelling approved for mortgage insurance prior to the beginning of construction, which he finds to have structural defects, to make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, (3) acquiring title to the property: *Provided*, That such authority of the Secretary shall exist only (A) if the owner has requested assistance from the Secretary not later than four years (or such shorter time as the Secretary may prescribe) after insurance of the mortgage, and (B) if the property is encumbered by a mortgage which is insured under this Act after the date of enactment of the Housing Act of 1964.

"(b) If the owner of any one- to four-family dwelling which is covered by a mortgage insured under section 203, 221, or 235 and which is more than one year old on the date of the issuance of the insurance commitment, makes application to the Secretary not more than one year after the insurance of the mortgage (or, in the case of a dwelling covered by a mortgage the insurance commitment for which was issued on or after August 1, 1968, but prior to the date of the enactment of this provision, one year after the date of the enactment of such provision) to correct any structural or other defect of the dwelling which seriously affects its use and livability, or which is attributable to failure of the dwelling to meet applicable State laws or local regulations relating to the public health or safety or which constitutes a violation of the minimum property standards promulgated by the Federal Housing Administration, the Secretary shall, with all reasonable promptness not to exceed forty-five days, make expenditures for any of the purposes specified in subsection (a), unless the defect is one that did not exist on the date of the issuance of the insurance commitment or is one that a proper inspection could not reasonably have been expected to disclose. The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling.

"(c) The Secretary shall by regulations prescribe the terms and conditions under which expenditures and payments may be made under the provisions of this section.

"(d) The Secretary shall take all steps necessary to notify owners of the provisions of this section and section 801 of the Housing Act of 1954 including notification by certified mail. If an owner fails to make application for reimbursement within the time set by this section and if his failure is the result of his not having received notification from the Secretary, the deadline for his application shall be extended to include a reasonable period of time after he actually received notification from the Secretary."

(b) Section 801(a) of the Housing Act of 1954 is amended by adding after the words "the beginning of construction" the following: "or substantial rehabilitation".

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. I yield myself 10 minutes.

Mr. President, I ask unanimous consent that the following staff members have the privilege of the floor: Robert Malakoff, Gary Buckley, Mike Simpson, Thomas Brooks, and Gordon Alexander.

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

The Chair inquires of the Senator whether he wishes the committee amendments to be considered en bloc.

Mr. SPARKMAN. I ask unanimous consent that that be done.

The PRESIDING OFFICER. Without objection, the committee amendments will be considered en bloc.

Mr. SPARKMAN. Mr. President, the bill before the Senate has as its principal purpose to extend authority to the Secretary of Housing and Urban Development to insure FHA mortgages and to carry out basic housing programs, the authority for which expired on June 30, 1973. It would also:

First. Establish specific dollar authorization ceilings for various housing and

urban development programs for fiscal year 1974;

Second. Authorize the Secretary of Housing and Urban Development in consultation with the Administrator of the Veterans' Administration to establish interest rate ceilings for FHA mortgages and VA-guaranteed loans. This authority expired on June 30, 1973, and the rate dropped back to the statutory ceiling of 6 percent;

Third. Assure that Federal housing programs are carried out to the full extent authorized by the Congress by requiring the Secretary of Housing and Urban Development to end any suspension of housing programs or withholding of funds; and

Fourth. Expand protection for homebuyers in other programs under sections 203 and 221 by authorizing expenditures for the correction of serious defects which were failed to be observed by the FHA inspector during the course of his duties in appraising the property prior to insurance.

Despite these efforts, however, the administration has adamantly refused to reinstate the programs. The President sent a message to Congress that he will have a report on a study now being made of all housing programs by September 7 of this year. This has delayed action on new legislation, but our Subcommittee on Housing and Urban Affairs is now holding hearings on new legislation independently of the administration. Our plan is to start considering a new 1973 housing bill at the conclusion of these hearings which end July 31. We may need other hearings after September 7 on the President's proposal, but intend to keep them short and start marking up a bill in September with the hope of having a bill passed this year.

The moratorium on subsidy funds did not affect other FHA and VA housing programs. These have been moving along, but ran out of authority on June 30. It is for these programs that the statutory authority for continuation ran out on June 30, 1973. The resolution before us will reinstate the authority.

This bill is also necessary to provide funding authority to continue all programs through fiscal year 1974.

Mr. President, the most controversial provision of the bill is section 14 which would authorize the Secretary of Housing and Urban Development to make expenditures for the correction of defects of one- to four-family homes financed under the FHA sections 203 and 221 programs.

There has been a lot of misunderstanding about this provision and I am afraid those opposed to it are raising a lot of extravagant claims which I believe are unwarranted.

Mr. President, the passage of this resolution is long overdue. The House of Representatives passed an extension bill on May 21; our Committee on Banking, Housing and Urban Affairs reported the House-passed version with amendments on June 25, 1973. However, because of the logjam of legislation before the Senate prior to the July 4 recess, it was impossible to obtain Senate action. Recognizing this situation and knowing of the urgency of such an extension authority, the committee also reported a simple 30-day extension bill (S.J. Res. 129) having identical provisions to the bill as passed by the House. The purpose of this simple resolution was to keep the programs going until such time as we could iron out differences among members of the Senate on several provisions in the amended House Joint Resolution 512. The matter, therefore, has been at an impasse since late June, and it is most urgent that the Senate complete action on the bill today and move it towards final law as soon as possible.

As the Senate knows, subsidized housing programs have been in a state of suspension since January 7, 1973, when the President froze all Federal subsidy funds for housing and urban development programs. The committee and the Congress was very much upset by the arbitrary action of the administration in cutting off programs that we had every reason to believe were carrying out their basic objective of providing decent housing for lower-income families.

We had an exchange of letters with the administration on this and conducted 2 weeks of oversight hearings on the freeze, and we concluded that the allegations made by the administration that the programs were not working and were inefficient was not correct.

First of all, let me say that the issue of Federal responsibility toward homeowners purchasing homes financed under FHA is an old one. The Congress first recognized it in 1954 when the law was written to require warranties to be made by home builders or sellers on all new homes insured under the FHA program. At that same time, the law required the builder or seller to deliver to the purchaser a written statement on the appraised value of the unit.

In 1964 the Congress went further and passed section 518(a) of the National Housing Act which placed the responsibility upon the Secretary of Housing and Urban Development to make expenditures for structural defects in new homes financed, by the FHA. By this action, the Congress established a definite precedent for what later followed in 1970 when section 518(b) was written into the law to place the same responsibility on the Secretary of Housing and Urban Development with reference to section 235 existing homes.

The Congress took this action in 1970 after we learned of the many serious hardships being placed upon unsuspecting lower income home purchasers who bought homes with an FHA insured mortgage. These people were unaware of the many possible hidden defects that did not turn up until they moved in. They relied upon the FHA, because it is a Government agency and, in fact, they received a copy of an appraisal statement signed by the FHA Commissioner. They had every reason to assume that the inspector or appraiser did his job properly and that they had no need to worry.

The 1970 amendment required HUD to make expenditures only in those cases where the defect existed on the date of insurance and was one that a "proper inspection could reasonably be expected to disclose."

I want to emphasize this latter point, because I believe it is an answer to those who contend that section 518(b) placed FHA in the business of writing defect insurance. The premise is that FHA's inspectors have an obligation to inspect homes and to detect serious defects before issuing an appraisal statement to the homeowner. When the FHA inspector or appraiser fails to detect serious defects which affect the livability of the home and, when a homeowner purchases such a home, the FHA has a responsibility to make good.

Soon after passage of section 518(b) in the 1970 Housing Act, the committee became aware that its coverage was too narrow and we received many complaints from lower-income homeowners who purchased homes under the FHA section 221(d)(2) program. They too were suffering hardships for the same reason as those families purchasing section 235 homes.

We held hearings on this matter in 1970 and recognized the equity of those claims and wrote an expanded provision in the bill before us to broaden the coverage beyond 235 to the 221 program. No bill was passed in 1971, but our Housing and Urban Development Act of 1972, which passed the Senate by a vote of 80 to 1, included such a provision.

As we all know, that bill never became law so that the matter continued to hang without statutory authority.

There has been no opportunity to act on this until last month when the extension resolution came before us. At that time, the complaints on the FHA inspection failures had mounted and it became very clear that the section 518(b) coverage should go, not only to section 235 homes, but also to sections 221 and 203(b) homes. The committee acted accordingly and we have before us section 14 of the resolution which would extend the 1970 law to cover these other programs.

It is rather interesting about HUD's attitude on the amendment. We have never received anything from the administration critical of the existing law nor did the committee receive anything prior to our markup session critical of the bill, S. 855, introduced by Senator STEVENSON on February 15, 1973. Comments from HUD were requested by the committee on February 20 of this year but we received no response to our request.

Claims have been made that these provisions will be very costly to the Government and will be a very difficult program to administer. I recognize that this may be true but we must weigh these arguments against HUD meeting its responsibility to lower income families who have put their lifesavings into a home which has serious livability defects and who need relief. Also it is important to remember that for many of these homes a small HUD expenditure to correct defects is a lot cheaper than having HUD take over the home and having to fix it up and sell it.

Many of us have heard about the large volume of FHA homes acquired by FHA in Detroit. I believe there are over 15,000 sections 221(d)(2) and 203 financed homes in that city from which the fam-

ilies walked away and left them to the FHA. Many of these homes were soon vandalized and all FHA had was a heap of rubble. The average cost to the FHA for these homes is around $7,000. Would it not have been much cheaper to pay the homeowner a small expenditure to fix up the home and correct the defects rather than havir g them abandoned at such a loss to the Government.

Mr. President, sometimes we in the Congress have to make hard decisions. This is one of them. I certainly am not one to authorize the foolish expenditure of Government money. On the other hand. I feel deeply for these homeowners and, in common decency and equity, I believe the Government should meet its obligation to them.

This year, my Subcommittee on Housing held two field hearings and I was able to see for myself the condition of some of the homes about which this amendment is concerned.

I have some pictures here of some of the homes I saw in Chicago. I was appalled by what I saw and am firmly convinced that serious mistakes were made by the FHA in insuring the mortgage on homes of such condition. Nevertheless, they were insured and now I believe the FHA has a responsibility to correct the defects found in them.

I believe that HUD has reacted well to the problems presented to it and has issued new regulations which should meet appraisal deficiencies in the future.

Secretary Romney started bearing down on his FHA appraisers as early as 1970 and issued a series of tightening regulations which I understand have greatly improved the quality of appraisals. I hope, therefore, that the necessity for expenditures for FHA cases since 1971 will be reduced to a bare trickle in the future. With the new regulations and a reasonable degree of supervision, I would expect very little money would be needed under this provision in the future.

Mr. President, some express great concern about the expenditures coming out of the reserve fund. I cannot get too excited about this. The fund was set up to meet all costs and expenses in connection with the writing and paying claims under the FHA insurance program. The mutual mortgage insurance fund has a balance as of the end of 1972 of $1.7 billion, and I believe it is well able to carry this added cost directly attributable to administration of the 203 program.

The other two funds, the General Insurance Fund and the Special Risk Fund, are in a deficit position and are supported by direct borrowing from the Treausry. These funds were set up with the understanding that they were highly risky, and it was expected that eventually appropriations would be made to make up for defects. The expenditures resulting from the 512 provision will add to the deficit, but it is justified as an added cost of FHA doing business.

Mr. President, the Congress cannot delay longer in authorizing expenditures to meet the needs of the families involved in FHA failures. In fairness and justice, these families are long overdue in necessary relief from their Government. I believe we must act now on this matter. We cannot wait for new omnibus legislation, which could be delayed until next year.

Mr. President, there will be an amendment offered relating to this resolution. I am hopeful that in the amended form that this measure may be agreed to.

I reserve the remainder of my time.

Mr. TOWER. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, today we are considering a very important piece of legislation. It will provide a much needed and long overdue extension of authorities for the FHA and VA programs.

House Joint Resolution 512 came to us from the House of Representatives as a simple extension bill. It did not emerge from our committee in that manner, however. When we reported the bill, several amendments were added to it. I seriously question the merits of some of these provisions, and it is my intention to offer an amendment regarding one of them.

It was my sincere hope that we could pass these extensions prior to June 30, 1973, the date they expired. Everytime we delay extending these programs, hundreds and thousands of people suffer. These are the people who have saved for and dreamed of owning their own home. They had made plans to vacate their premises and move into a new home, only to find that they had to wait longer than should have been necessary. I think all of us are well aware of the calls we've been getting from our constituents over the past couple of weeks regarding this matter.

Because the legislation calendar was so crowded during the last week before the recess—many of you will remember that we were in session until 11 p.m. on several occasions—and because it was my intention to offer an amendment to delete section 14 of the bill when it came up on the floor, there was a strong possibility that time would not permit us to consider House Joint Resolution 512 prior to the 4th of July recess. In light of this possibility, the committee reported out Senate Joint Resolution 129—a bill which I strongly favored.

Senate Joint Resolution 129 would have extended the FHA and VA programs for 30 days. The purpose behind the proposal was that we could at least extend these programs so that those who had made plans to purchase a home could still do so. It was thought that we should continue the housing programs and any questions that we had regarding House Joint Resolution 512 could be resolved after the July 4 recess. Unfortunately, this bill did not pass prior to the recess.

I was very pleased to see this body move so quickly a few days ago on H.R. 8949. This bill would at least allow the VA programs to continue. I am advised that the President should sign this into law very soon. It is hoped that by our action today we can get the FHA programs moving once again, as well. It is long overdue.

Mr. President, I intend to call up an amendment to delete section 14 from the bill. If other Senators have opening remarks prior to that time, I would be glad to yield the floor. Otherwise, without further ado, I will call up my amendment.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and that the bill as thus amended be regarded for the purposes of amendment as original text.

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

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 6717. An act to amend certain provisions of the Land and Water Conservation Fund Act of 1965 relating to the collection of fees in connection with the use of Federal areas for outdoor recreation purposes; and

H.R. 8949. An act to amend title 38 of the United States Code relating to basic provisions of the loan guaranty program for veterans.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, July 20, 1973, he presented to the President of the United States the enrolled bill (S. 504) to amend the Public Health Service Act to authorize assistance for planning, development, and initial operation, research, and training projects for systems for the effective provision of health care services under emergency conditions.

TEMPORARY EXTENSION OF CERTAIN HOUSING AND URBAN DEVELOPMENT LAWS AND AUTHORITIES

The Senate continued with the consideration of the joint resolution (H.J. Res. 512) to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes.

Mr. MUSKIE. Mr. President, passage of House Joint Resolution 512, which is before us today, would not only allow continuation of Federal housing programs, but would also provide an assurance that the Federal Government will use existing law to meet our housing needs.

The programs which this resolution would continue have helped millions of Americans find decent housing and a decent living environment. But last January, the administration halted all new commitments for subsidized housing programs, including the sections 235 and 236 interest subsidy programs, rent supplements, low rent public housing, and college housing. The constitutionality of

the administration's action is being challenged in a court suit joined by my home State of Maine.

But gaining relief through the courts could take time, and the housing program in my State cannot afford that time. Mr. President, yesterday the Maine Housing Authority formalized the last substantial construction contract using funds allocated before the freeze. There is no more money.

The significance of the subsidized housing programs to my home State cannot be overemphasized.

The need for livable housing is obvious. For example, according to census figures, 4,600 of 8,000 housing units in Piscataquis County, Maine, lacked full plumbing. Only half the housing units in Hancock County had full plumbing.

Maine has one of the lower per capita incomes in the Nation, but because of a challenging climate and transportation difficulties, the home construction costs are perhaps the highest.

There are literally thousands of families who simply cannot afford to build a home on the private market.

Fully half the new housing starts in Maine last year were subsidized. FHA 235, 236, and 221 programs alone accounted for 1,163 housing units in 1972—nearly one-fifth of total housing starts last year.

The Maine State Housing Authority has estimated that 60,000 units of subsidized housing will be needed over 10 years just to prevent a deterioration of the housing situation in my State.

Using an imaginative and vigorous approach which produced enthusiastic response from private capital sources, 3,164 subsidized units were built in 1972. But that was only half the number of units required last year to meet the goal.

The housing moratorium has put an end even to that partial effort.

Mr. President, it has been said time and time again that Congress is not living up to its commitment in 1968 to build 26 million units of decent housing by 1978. Our pledge was never followed through with a full commitment of funds, and now the administration has abandoned even the promise.

The administration's unfortunate housing moratorium calls for a strong response—including the anti-impoundment language in House Joint Resolution 512. Similar language has already been adopted by the Senate in the HUD appropriations bill, now in conference. I urge the Senate to retain the anti-impoundment language in these two bills.

Mr. President, I hope that housing programs can—and will—be improved. But there is no excuse to cripple our existing housing effort while new, untried proposals are being debated.

Mr. CRANSTON. Mr. President, section 13 of House Joint Resolution 512 orders the Secretary of the Department of Housing and Urban Development to cease the withholding of funds for public housing, sections 235 and 236 of the National Housing Act, rent supplement housing, rural housing programs, and section 312 rehabilitation loans.

Section 13 requires the Secretary of HUD to carry out these needed housing programs to the full extent possible pursuant to the contract authority or other funds previously appropriated or otherwise authorized by Congress. The purpose of this section is to end the moratorium imposed by the administration by carrying out the intention of Congress expressed in previously enacted authorizations and appropriations. This section reaffirms what Congress has always intended when it appropriated money; namely, that funds should be spent to the full extent possible to carry out programs approved by the Congress. This intent has been implicit in previous housing authorization and appropriations acts; it is made explicit in section 13. Despite this difference, the underlying intent remains unchanged: funds appropriated by Congress must be spent to the full extent possible.

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 8, line 16, delete section 14 and the title thereto.

Mr. TOWER. Mr. President, this resolution came to us as a simple extension bill which would extend the authority of certain Federal housing programs and community development programs. This was not the way the bill emerged from the Banking, Housing and Urban Affairs Committee, however.

House Joint Resolution 512 was amended to include specific dollar amounts for housing and community development programs in addition to incorporating S. 855, S. 1349, and S. 1440. S. 855, which is now section 14 of House Joint Resolution 512, would amend section 518(b) of the National Housing Act. This provision authorizes the Secretary of HUD to make expenditures to correct defects affecting use or livability in single family homes insured by the FHA, under the section 235 program, where the defects were present at the time of commitment and could reasonably have been discovered on a proper inspection. House Joint Resolution 512, as presently before us, would enlarge the scope of this program to include houses insured under sections 203 and 221.

I highly favor the section 518(b) program as it presently exists. It has compensated homeowners for defects that existed in their houses at the time they made their purchase. These are defects which should have been discovered but were not discovered by the FHA at the time of appraisal.

Having purchased the homes under the section 235 program, these homeowners were of limited incomes and could not afford the repair of major defects. Our committee found that some FHA appraisers had allowed defective homes to be sold to lower income families under the section 235 program. In our committee report in 1970, in explaining the section 518(b) provision, we found that "most purchasers of homes under 235 understandably believe that the Federal Government, which is providing a substantial subsidy to these families, is protecting their interest in the property." Until that point in time, FHA was primarily in the business of appraising properties solely in order to see that the Government was protected when it insured the mortgage on the property.

But section 235 was a very new program. It was just getting underway, and the emphasis at HUD was on production. Many factors were prevalent at that time: Increased production, little increase in staff, decentralization at HUD of program administration, working with low-income families who often were in the need of counseling but were not able to receive it, and several other factors. All of this led to a situation which resulted in very little control over the quality of the house that was being purchased by a low-income family and insured by the Federal Government.

In these cases, the Federal Government did have a greater interest in these homes than they had in the past. HUD was not merely protecting its interest in the value of the property—there was something more that was owed. HUD was dealing with a new type of client and subsidy payments were being made to assist in the purchase of a house. In light of these facts, because we felt that FHA was now operating under a new program, with new dimensions, we felt that it had additional duties and obligations. And that is one of the main reasons that we provided the assistance that is now incorporated into law as the section 518(b) program.

Now, section 14 of House Joint Resolution 512 would expand the provisions of section 518(b) to the sections 203 and 221 programs. But these programs are different from the section 235 program. Section 203 is the standard single-family mortgage insurance program that has been in existence for years. It contains no subsidy payments and the purchasers who utilize the program are of a much higher income, on the average, than the section 235 purchasers. The section 221 (d) (2) program is also a homeownership program. While it is designed for low- and moderate-income families, it contains no interest-subsidy payments or any other kind of payment. It is strictly a mortgage insurance program.

As can be seen, the sections 203 and 221(d)(2) programs are very different from the section 235 program as far as the Government's financial interest is concerned. All three involve mortgage insurance, but only one, the section 235 program, involves the additional element of a direct Government financial interest in the property. To many, I think, a strong argument can be made that the FHA's responsibility to a purchaser under section 235 is different than that under sections 203 and 221(d)(2). An argument can be made that section 518 (b) is an exception to the traditional role FHA has played, that of providing financing for housing to those who could not ordinarily obtain it, and that this exception should not be extended, as is presently proposed. An argument can be made that FHA's role is singular as that of an insurer of mortgages and not an insurer of mortgages plus an insurer against defects that exist in a house at the time of purchase.

Whatever we think of the position of the FHA, be it strictly that of an appraiser and insurer of mortgages or of the additional roles of inspector and insurer of defects, I do not take the position of being in opposition to a proposal which would provide relief to homeowners who are harmed and suffer as a result of some action or inaction on the part of the Government.

I am aware of the tremendous hardships that have prompted this proposal as originally proposed by the distinguished junior Senator from Illinois. I have been told of the absolutely horrible conditions some of these homes are in. And this condition is not restricted to Chicago, but is present in Pittsburgh, Philadelphia, and other cities in this country. The distinguished chairman of our committee, Senator SPARKMAN, came very close to suffering bodily injury as he was touring a home in the Chicago area, due to its structural deficiency. There is no question that a problem exists which should be rectified. My major concern is that I do not think that section 14 of this proposal is the proper vehicle to provide a solution to this problem.

This proposal contains many provisions which raise several significant questions. It provides that any purchaser of a house insured under section 203 or 221, from August of 1970 to 1 year after enactment of the bill could make a claim against HUD for defects that existed at the time of purchase, but which were not uncovered by an FHA appraisal. This time span could cover a period of 4 years. The degree of difficulty, if not the impossibility of verifying these claims would be enormous.

I cannot imagine how one could determine if a defect existed 4 years ago. Would the purchaser have the burden of proof that the defect existed when FHA made the original appraisal, or would FHA have the burden of proving the contrary? How difficult would it be to determine if a minor problem, which had not been repaired, in fact was the cause of a structural defect that manifested itself well after the inspection? And to what degree of difficulty do we encounter when we try to define structural defect?

In my mind, one of the major problems this bill raises is how this program is to be financed. The bill provides no authorization for appropriations. Presumably, therefore, financing would have to come out of the mortgage insurance funds that have been established to compensate for any claims that might arise as the result of a foreclosure on a house insured under any one of the mortgage insurance programs.

Basically, we are talking about three separate mortgage insurance funds: The mutual mortgage insurance fund, the general insurance fund, and the special risk insurance fund. Presumably, payments relating to section 203 houses would come from the mutual mortgage insurance fund, payments relating to section 221(d)(2) houses would come from the general insurance fund and payments for section 235 houses would come from the special risk insurance fund.

Let us take a brief look at the financial status of these funds. On July 10–11 of this year, just a few days ago, Congressman RANDALL, chairman of the Legal and Monetary Affairs Subcommittee of the House Government Operations Committee held hearings on the financial stability of these funds. At those hearings, the General Accounting Office—GAO—testified that as of June of 1973, it was estimated that insurance reserves of the special risk insurance fund would show a deficit of $290 million and as of June 1974, these reserves would show a deficit of about $524 million. Regarding the general insurance fund, it was estimated that the reserves, as of June 1973, showed a $118 million deficit and it was projected to further decrease to $353 million by June 1974.

Only the mutual mortage insurance fund showed an excess of fund reserves over reserve requirements. I am advised, by HUD, that according to their estimates, the implementation of this program would reduce the mutual mortgage insurance fund to a level which would be below the reserves estimated to be needed for actuarial soundness.

While it is intended to fund section 14 from these insurance funds, a question has been raised, and no clear answer has been given, as to whether or not these funds can legally be used for this purpose. It has been argued that only payments for general expenses in running these programs, and payments made on insurance claims are eligible claims which can be made. This would not include a payment for a defect which existed in a house at the time of the FHA inspection, but which was not discovered at that time.

Regarding the costs of the program, HUD estimates that if claims are made at the same rate as they have been for the section 235 program, then the initial cost could run as high as $305 million with an annual prospective cost of $59 million. If claims are made at a rate which is 10 percent less than the present rate, the initial estimated amount is $178 million and the annual prospective cost is $35 million.

There are other parts of this proposal which raise questions in my mind regarding how effectively the program can be administered. The bill makes it mandatory that the Secretary shall make the payment to correct the defect within 45 days of the application. This time would be almost impossible to comply with.

Another question is what if the owner has abandoned the property for a couple of years, yet still retains title. Presumably he would still be allowed to make a claim under this proposal.

This bill provides that a claim can be made if a defect exists which violates the FHA minimum property standards. The practical problem here is that the FHA does not apply its minimum property standards to existing houses, but only to new construction, and even that is limited to where the FHA can inspect the property during construction. Yet section 14 does not deal with new houses, but houses that are at least 1 year old.

The bill further provides that HUD shall take all steps necessary, including notification by certified mail to all purchasers of homes insured under section 203 and 221, to apprise the mortgagors of its provisions. In addition to being an almost impossible task, it is argued that this might invite claims from those who might have had defects in their houses after an FHA inspection, but who want compensation anyway.

There are other features of this proposal which cause me some concern which I shall not go into at this time.

Mr. President, this is not the type of proposal that should be tacked on to a simple FHA extension bill.

What we are doing here is creating a major new program. I want to emphasize that I am not opposed to expanding and enlarging the section 518(b) program. This program, however, would drastically alter the purpose of the FHA insurance program. No longer would the FHA merely be in the business of making financing more readily available to those who might not be able to secure it on their own. FHA would now wear an additional hat—that of reimbursing homeowners for defects in their property. I submit that more discussion and consideration is necessary before we go off on the course in which we seem to be heading. I do not think we have the facts before us by which we can determine the complete ramifications of this proposal.

I urge the adoption of my amendment.

Mr. BENNETT. Mr. President, will the Senator yield? Are we on controlled time?

Mr. TOWER. We are on controlled time, and the Senator may have as much time as he requires.

Mr. BENNETT. Mr. President, I thank the Senator.

I think I should put into the RECORD the information that the courts have developed with respect to the responsibility of the FHA based on its appraisal of mortgages.

In his letter of July 18, the Senator from Illinois (Mr. STEVENSON) justifies section 14 of House Joint Resolution 512 on the ground that "thousands of innocent homebuyers across the country have been faced with unexpected repairs due to the mistakes of their own Government. These homebuyers, many of whom have low or moderate incomes, trusted their Government and must now pay for their misplaced trust."

The thrust of this theory of liability is that buyers of homes on which the FHA has insured mortgages are within the class sought to be protected by the requirement that the FHA appraise the property. Such theory cannot be substantiated in any legislative history, and it has been expressly and emphatically rejected by the U.S. Supreme Court in *U.S.* v. *Neustadt*, 366 U.S. 696 (1961).

In 1954, Congress added section 226 to the National Housing Act which requires sellers to inform buyers of FHA-appraised value. In hearings before the Senate Committee on Banking and Currency, the following exchange took place between Senator Bennett and Home Finance Administrator Cole:

Mr. Cole: . . . I agree with the Senator that the home buyer should understand that the Federal Government is not guaranteeing his home.

Senator BENNETT. That is correct. . . . The idea of the inspection service under Title II is to protect the Federal Government, which

undertakes to insure the loan. The fact that the inspection is made, provides collateral benefits to the property owner. There is no question about that. But in the last analysis the property owner cannot say to the Federal Government, "Well, your inspector inspected my house, and now look what's happened; therefore, you are responsible; therefore, you must come down here and fix it up."

That is a quotation from the hearings before the Senate Committee on Banking and Currency, Housing Act of 1954, 83d Congress, second session, at pages 1402 and 1403.

Citing the above quoted exchange, the Supreme Court described the legislative history as follows:

It was repeatedly emphasized that the primary and predominant objective of the appraisal system was the "protection of the Government and its insurance funds"; that the mortgage insurance program was not designed to insure anything other than the repayment of loans made by lender-mortgagees; and that "there is no legal relationship between the FHA and the individual mortgagor". Never once was it even intimated that, by an FHA appraisal, the Government would, in any sense, represent or guarantee to the purchaser that he was receiving a certain value for his money. (366 US at 709)

The foregoing is not to say that Congress does not have the power to change long-accepted notions of the FHA mortgage insurance program; of course it does. But when it does—and because of Senator STEVENSON'S amendment we may be in that process now—we should all be aware of what we are doing: we are adding a new concept of defect insurance to mortgage insurance for the benefit of, as Senator Stevenson puts it, "innocent homebuyers, many of whom have low or modernate incomes." In essence, we are asking the FHA mortgage insurance system to benefit through a subsidy particular classes of homebuyers who, because of their economic status, are thought to be in such need.

However worthy Senator STEVENSON'S idea may be in his amendment, the reason we would be doing so is not that the Government has failed some part of its citizenry, since the duty of the Government was to insure the mortgage, not warrant the property, but rather we would do so on the ground that these homeowners are persons without the means to remedy defects in their homes. The amendment does not cover all defects missed by FHA inspectors, but, as now amended, only such defects in homes owned by lower-income persons. At the same time, the amendment does not cover all lower-income homeowners but only those fortunate enough to have FHA-insured mortgages. I object at this time to his particular solution in section 14 because, as I have tried to say, it is based on an erroneous theory of liability, while at the same time failing to meet the needs of all homeowners.

I believe that if we had had the benefit of hearings on the amendment and if we had a better idea of where we are going on subsidized housing generally, we would be in a position to say much more confidently than we are on the Senator's solution. However, at the present time there are too many uncertainties and apparent inconsistencies in the amendment to permit me to vote responsibly to adopt it.

Mr. President, I welcome this opportunity to bring this record into the record of this debate so that we can know that the Supreme Court has accepted the fact which I stated in the hearings back in 1954, that the purpose of the insurance program was to insure the Government against loss on the mortgages it guaranteed, and not to insure the homeowner against any defect in his property.

The PRESIDING OFFICER. Who yields time?

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

Mr. SPARKMAN. Mr. President, I will yield to the Senator from Wisconsin a little later.

Mr. President, I yield myself 5 minutes.

Mr. President, I want to say this in reply to what the Senator from Utah has just said. It is true that at that period of time in the 1960's when the Supreme Court gave that decision in the other case, if I recall correctly, the Supreme Court held that it was a misrepresentation and that therefore the Government was not liable.

However, I want to call attention to the fact that in 1964, 4 years after the Supreme Court made that decision, the Congress amended the law and authorized the Secretary of HUD with respect to one to four family dwellings approved for FHA insurance—prior—construction, which he finds to have structural defects, to make expenditures for:

First, correcting such defects;

Second, paying the claim of the owners of such property arising from such defects; or

Third, to acquire the title to the property.

Then in 1970 we further amended the law, section 518(b), to authorize the Secretary of HUD, with respect to one-family homes approved for FHA insurance under section 235 which are found to have structural or other defects which seriously affect the livability of the dwelling, to make expenditures to correct such defects provided:

First. The claim is made no later than 1 year after insurance of the mortgage or 1 year after the date of enactment of this law for mortgages insured prior to such date, and

Second. The defect existed on date of insurance and is one that a proper inspection could reasonably be expected to disclose.

Furthermore, in 1972, we further amended the law so that it contained a "defects" provision which would have extended existing law to cover residences covered by FHA section 221 back a period of 2 years to 1970. The Banking Committee of the House of Repesentatives had a similar provision.

In 1973, when the committee reported this bill by a vote of 10 to 3, it reinforced this idea of liability for curing the damages caused by defects that should have been found by proper inspection and should have been a part of a proper appraisal. So it is perfectly in line with what we have done.

Let me say this: the Senator from Illinois (Mr. STEVENSON) offered this amendment, and the committee supported him in it. I admit that a great deal of what the Senator from Texas (Mr. TOWER) has said is quite accurate, and that this is a matter that ought to have careful study in order to provide certain means of carrying out the programs that we want. The one he mentioned, for instance, regarding a financing method should be included. We did not have time; we did not go into that deeply enough to provide for all those things. So I would say that the amendment that was offered by the Senator from Illinois and adopted by the committee was more or less a stopgap proposal.

I have discussed this with the Senator from Illinois (Mr. STEVENSON), and as a matter of fact he has joined with me in a proposed amendment which I propose to offer as a substitute for the amendment offered by the Senator from Texas.

Mr. President, I now send to the desk an amendment in the nature of a substitute for the Tower amendment offered by Senator STEVENSON and me.

Mr. TOWER. Mr. President, I yield back my time on the amendment so that the substitute amendment of the Senator from Alabama will be in order.

Mr. SPARKMAN. And I yield back my time on the amendment.

The PRESIDING OFFICER. Will the Senator suspend momentarily?

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield me 1 minute, while the Parliamentarian is looking at the amendment?

Mr. SPARKMAN. I yield.

UNANIMOUS-CONSENT AGREEMENT ON TRUTH IN LENDING ACT AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with the Republican leadership and with the distinguished Senator from Wisconsin (Mr. PROXMIRE).

I ask unanimous consent that at such time as the bill (S. 2101) to amend the Truth in Lending Act, is called up and made the pending business before the Senate, there be a time limitation of 2 hours, to be equally divided between the majority and minority leaders or their designees, with 1 hour on any amendment and one-half hour on any amendment to an amendment, debatable motion, or appeal; and that the unanimous-consent agreement be in the usual form, with the exception of three amendments to be offered by the Senator from Wisconsin (Mr. PROXMIRE), as follows; one having to do with the computation of finance charges on revolving credit, the second on a ban on minimum finance charges, and the third on the regulation of closing costs—these amendments to be in order, regardless of their nongermaneness.

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

The text of the unanimous-consent agreement is as follows:

Ordered, That, during the consideration of S. 2101, the Truth in Lending Act Amend-

ments of 1973, debate on any amendment in the first degree shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment and the manager of the bill, and that debate on any amendment in the second degree, debatable motion or appeal shall be limited to 30 minutes, to be equally divided and controlled by the mover of any such amendment or motion and the author of the amendment in the first degree:

Provided, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further*, That no amendment (except three amendments to be offered by the Senator from Wisconsin (Mr. Proxmire)) that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill, debate shall be limited to 2 hours, to be equally divided and controlled, respectively, by the majority and minority leaders: *Provided*, That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion or appeal.

TEMPORARY EXTENSION OF CERTAIN HOUSING AND URBAN DEVELOPMENT LAWS AND AUTHORITIES

The Senate continued with the consideration of the joint resolution (H.J. Res. 512) to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. Mr. President, may my substitute amendment be reported? I offer it for myself and on behalf of the Senator from Illinois (Mr. STEVENSON).

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Beginning with line 19 on page 8, strike out all through the end of the joint resolution and insert in lieu thereof the following:

EXPENDITURES TO CORRECT OR COMPENSATE FOR SUBSTANTIAL DEFECTS IN FEDERAL HOUSING ADMINISTRATION INSURED MORTGAGED HOMES

SEC. 14. (a) Section 518(b) of the National Housing Act is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following:

"(2) The Secretary is authorized to make expenditures to correct, or to compensate the owner for, structural or other defects which seriously affect the use and livability of any single-family dwelling or two-family dwelling which—

"(A) is covered by a mortgage insured under section 235 of this Act and is more than one year old on the date of the issuance of the insurance commitment, if (i) the owner requests assistance from the Secretary not later than six months after the date of enactment of this paragraph, and (ii) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose; or

"(B) is covered by a mortgage which was insured under section 221(d) or 203 of this Act not more than two years prior to the date of enactment of this paragraph, if (i) the owner requests assistance from the Secretary not later than one year after the date of enactment of this paragraph, and (ii) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose.

The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling. In carrying out the provisions of this paragraph, the Secretary shall expedite the processing of applications and furnishing of assistance to the fullest extent possible."

Mr. SPARKMAN. Mr. President, the amendment which I propose as a substitute for the Tower amendment relative to section 14 of the bill before us. Senator STEVENSON, the sponsor of the section 14 provision as approved by the committee, is joining me in cosponsoring this amendment.

The purpose of this substitute amendment is to simplify greatly and reduce substantially the coverage of section 14 as reported.

The estimated cost of the substitute amendment would be less than one-half the cost under the committee amendment. This is brought about by limiting the coverage to those FHA 203 and 221 residences with mortgage amounts less than the section 235(i) ceiling—$18,000 up to $24,000 for large single-family homes in high-cost areas. If the amendment is accepted, all housing covered under the revised section 518(b) would have the same mortgage ceiling and, presumably, would cover only the lower-income families. These less sophisticated families often do not realize the risks involved in buying an existing home and, very frequently, do not employ counsel or technical consultants to inspect their homes before purchase.

They are more likely to depend upon their Government and assume that the appraisal report received for FHA was in fact a stamp of approval that the property was in good condition and free of structural and other defects which affect its use and livability.

I ask unanimous consent to include a statement of actions taken regarding protection to FHA mortgagers with respect to serious defects in dwellings.

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

DIRECTIVES RECENTLY ISSUED BY THE DEPARTMENT DESIGNED TO IMPROVE THE QUALITY OF PROCESSING AND REDUCE LOSSES TO THE INSURANCE FUNDS

May 19, 1969.—Issued Circular FHA 4400.26 designed to clarify procedures in the field offices with reference to the utilization of Section 223(e).

July 31, 1970.—Issued Circular FA. 4441.24 which redefined and reiterated our appraisal policies applying tightened standards to existing properties.

December 11, 1970.—Issued Notice HPMC–FHA 70–103 requiring establishment of a training program for the appraisal of existing dwellings.

December 15, 1970.—Issued Circular HPMC–FHA. 4441.27 designed to improve the quality of appraisals under Section 235. The Circular instructed all offices to eliminate Section 235 sales data from the data print outs issued to the appraisers and required that at least one of the three comparables used in the market approach to value be a conventional (non-FHA or VA) sale.

December 23, 1970.—Issued Circular HPMC–FHA 4035.6 requiring intensification of field review in problem areas. In this connection the Chief Appraiser in each office was required to delineate and identify all inner-city transitional and problem areas where there was evidence of substantial speculator activity.

December 30, 1970.—Issued Circular HPMC–FHA 4035.7 instituting criteria for acceptance of mortgagee certifications regarding repair requirements on home mortgage cases; to standardize and clarify certifications relating to structural and mechanical equipment.

January 7, 1971.—Issued memorandum instructing all Regional Administrators to require Area and Insuring Office Directors to conduct one day meetings to be attended by all single-family staff and supervisory appraisers and active fee appraisers. The subject of these meetings was to be the importance of quality appraisal and inspection work and the obligations of field office staffs to the purchasing public.

March 4, 1971.—Issued Change 1 to Circular HPMC-FHA 4035.8 providing additional instructions to the field offices with regard to the processing of the increasing volume of applications involving inner-city and other problem areas dominated by speculators.

April 21, 1971.—Issued Notice HPMC-FHA 71–20 requiring all field offices to review the estimates being used for heating and utilities, maintenance and repairs, taxes and insurance to make certain that the schedules being used realistically reflected the dollar amounts needed to cover these expenses.

May 14, 1971.—Issued Circular HPMC-FHA 4005.16 to provide current policy guidance in the appropriate use of the Section 223(e) program. It promulgated specific requirements with respect to the properties involved in the program and directed that properties must be in compliance with the code enforcement areas, and possess sufficient future economic life to justify the insurance of a long-term mortgage.

August 3, 1972.—Issued Circular HPMC-FHA 4040.2A revising mortgage credit criteria for the home mortgage insurance programs. Specific provision was made to indicate that the income of prospective mortgagors should be considered adequate if the total prospective housing expense (mortgagor's share under Section 235) does not exceed 35% of net effective income, and the combined total of prospective housing expense and other recurring charges does not exceed 50% of net effective income.

August 18, 1973.—Issued Circular HPMC-FHA 4005.18B clarifying situations under which extensions of commitments require field review.

August 9, 1972—Issued Circular HPMC-FHA 444.1 30B which eliminated the need for the Seller's Reimbursement Agreement and escrow deposit for all sellers except speculators who are not rehabilitators.

August 29, 1972—Issued Circular HPMC-FHA 4035.7B clarifying situations calling for contractor certifications and providing for payment by HUD for such certifications. Revision of the certification language with a statement warranting the condition as of date of inspection only constituted a liberalization of procedures.

November 30, 1972—Issued Circular HPMC-FHA 4415.25 revising loan-to-value ratios for 2-, 3-, and 4-family dwellings under Section 221(d)(2) to conform with those previously established under Section 203(b). This constitutes a tightening of procedures since it increased equity requirements.

December 14, 1972—Issued Circular HPMC–FHA 1300.9 requiring flood insurance in special flood hazard areas.

Mr. SPARKMAN. May we have a vote on it at this time?

The PRESIDING OFFICER. Do Senators yield back their time?

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

Mr. TOWER. There is time running on the substitute.

Mr. STEVENSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENSON. How much time is there on the substitute motion?

The PRESIDING OFFICER. Fifteen minutes on each side on the Sparkman amendment.

Mr. SPARKMAN. I yield the Senator from Illinois 5 minutes.

Mr. STEVENSON. Mr. President, first, I think it should be explained for the RECORD why action on House Joint Resolution 512 was delayed.

This bill House Joint Resolution 512, was reported by the Committee on Banking, Housing and Urban Affairs on June 20, in time for action before the FHA programs expired at the end of the month. No action was taken then, because the Department of Housing and Urban Development and certain Members of the Senate objected to the reimbursement provision we are now discusing.

I still do not know why we could not have faced the issue then as easily as we are today. It was proposed that we extend the FHA programs by 30 days, but that would have placed us in the same position, up against the August recess, as we were then before the Fourth of July recess. We proposed, instead, a 20-day extension of FHA programs. That was unacceptable, and we then proposed a 25-day extension, and that was unacceptable to HUD.

It was at that point that we reached the impasse. Since then, there has been confusion about the reimbursement provisions in this bill.

The amendment offered by the distinguished chairman ought to resolve a good deal of the uncertainty and confusion which has arisen over those reimbursement provisions. What they do, basically, is simply to give the owners of section 203(b) housing and section 221 (d)(2) housing the same rights that the owners of section 235 housing now enjoy. There is nothing new.

The principle was established in 1970, when the section 235 program was established. The people involved are the same. In both cases, they are innocent homeowners, injured by, if not the negligence, the malfeasance of their Government. They buy housing supported by the FHA with the reasonable expectation that it has been inspected and that it has been approved by the FHA. They find out afterwards that is not the case; either the inspection never took place or it was conducted in a negligent way. Then they find they are saddled with an unexpected and oftentimes very high cost of repairs. Then, they either suffer that high cost of repairs, or they abandon the homes. When they abandon the homes, they abandon the mortgages, and the Government has to redeem the mortgages.

Mr. President, this amendment is not only a matter of simple justice for homeowners injured by the neglect of their own Government; it is also a measure that will save the FHA money. The cost of repairing defects is lower than the cost of redeeming mortgages. We have experience on the basis of which I can make that statement. We have the experience with reimbursement rights for structural defects suffered by the owners of section 235 housing.

In the case of section 235 housing, the average reimbursement costs run about $815. The average mortgage redemption cost for section 235 housing runs about $4,000. It is even higher in the case of section 221 housing—about $7,000 in that case.

This amendment will cost the taxpayers nothing. It should save the FHA money. To the extent reimbursements are paid they will be paid out of the funds already mentioned, the principal cost coming from the mutual mortgage insurance fund, which has a balance of $1.8 billion nad a conservatively estimated actuarial reserve surplus about $300 million.

In conclusion, if in the case of the special risk fund or the general insurance fund or mutual mortgage insurance fund replenishment does at some time become necessary, it can be obtained through premiums. It can be obtained through Treasury borrowings by HUD. It can be obtained through authorizations and appropriations; but we are not at that point now, and that is why the bill contains no authorization for appropriations. None is needed.

I urge the Senate to adopt the substitute amendment offered by the distinguished chairman and I thank him for yielding me this time.

Mr. JAVITS. Mr. President, I have read the committee report with great interest. It goes a long way toward meeting what has occurred in connection with the moratorium.

I thank the committee for paying attention to a letter which I joined in, with Senators PROXMIRE, HART, KENNEDY, and BROOKE respecting the urgent need of the cities for continuing the existing programs.

I express my appreciation to the Senator from Alabama (Mr. SPARKMAN) and the Senator from Texas (Mr. TOWER) and their colleagues on the committee.

I ask unanimous consent that the joint letter be placed in the RECORD.

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

U.S. SENATE,
Washington, D.C., June 19, 1973.

Senator JOHN SPARKMAN,
Chairman, Senate Banking, Housing and Urban Affairs Committee, New Senate Office Building.

DEAR MR. CHAIRMAN: We understand that the Committee will shortly consider H.J. Res. 512, a vital piece of legislation to extend the basic housing and urban development programs for one year.

Since January 5, 1973 we have seen the Department of Housing and Urban Development suspend or terminate most of the basic housing and urban development programs with no alternative programs in sight. Studies are now being conducted on the existing programs and the Administration has made a commitment to come forward with new proposals in September 1973. Even if this deadline is met it is doubtful whether new legislation could be sent to the President before June 30, 1974. Thus it is essential that the present programs go forward until such time as new programs take their place.

Therefore, in addition to the extensions contained in H.J. Res. 512 as passed by the House, we believe the Committee should add an extension of the public housing program, particularly as it relates to operating subsidies, the rent supplement program, and language in section 235 and 236 which would authorize appropriations of such sums as may be necessary to carry out these programs. This is important to show Congressional intent that such programs should continue until June 30, 1974 and not be brought to a standstill by a moratorium.

Most importantly we feel that the Committee should add language to H.J. Res. 512 which would require the Department of Housing and Urban Development to carry out the specific programs contained in the Resolution and vitiate the moratorium. With no substitute programs in place to carry out the provisions of the 1968 Housing Act we are not living up to our commitment to provide decent housing to those who most need it. Subsidized housing units are scheduled to drop from a level of 400,000 to a level of 290,000 in fiscal 1974. This is not acceptable to millions of low and moderate income people who are desperately in need of housing. We feel that the Committee should act and approve language along the lines of S. 1440 introduced by Senator Proxmire or some variant thereof. This is the only appropriate course for the Congress to take in view of the lack of any real alternative at this time.

Sincerely,

JACOB K. JAVITS,
PHILIP A. HART,
EDWARD W. BROOKE,
WILLIAM PROXMIRE,
EDWARD M. KENNEDY.

Mr. TOWER. Mr. President, the distinguished chairman, in his usual skillful way, has done a very good job of trying to effect a compromise on this measure. Certainly what he proposes is a vast improvement over section 14.

I am bound to say, however, that it still does not meet all the objections I have and I think the department has. Therefore, as much as I dislike disagreeing with my chairman, I feel constrained to oppose it.

I am prepared to yield back the remainder of my time in opposition to the substitute if the chairman is also prepared to yield back his time, so that we can vote.

Mr. SPARKMAN. Mr. President, I yield back my time.

Mr. TOWER. Mr. President, I yield back my time.

The PRESIDING OFFICER (Mr. HELMS). All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Alabama.

The amendment was agreed to.

Mr. TOWER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Texas will state it.

Mr. TOWER. Do we not now have to act on the Tower amendment as amended?

The PRESIDING OFFICER. The answer is no.

Mr. TOWER. Good. I thank the Chair.

Mr. PROXMIRE. Mr. President, will the Senator from Alabama yield?

Mr. SPARKMAN. Mr. President, I yield 10 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 10 minutes.

Mr. PROXMIRE. Mr. President, the resolution before the Senate includes an amendment which I offered in committee to end the moratorium on low- and middle-income housing. Since January 6, the administration put into effect a moratorium that contains no approvals of low- and moderate-income housing in any of the vast housing programs we have designed to provide homes for hundreds of thousands of Americans.

The RECORD is replete with examples, and it has not been denied in any way, shape, or form, that we still have serious housing conditions in this country. We have, on the basis of HUD's own statistics, 9.6 million substandard houses, including those without plumbing are very dilapidated or which are subject to being overcrowded.

So we have a very big problem. It seems unconscionable that the administration, under any circumstances, should act without the consent of Congress and without coming to Congress for approval—in effect vetoing the deliberate action of the Senate and the House of Representatives.

I want to read to the Senate two short paragraphs in the resolution which would end the moratorium:

We find in section 13(a)(1):

The Secretary of Housing and Urban Development shall immediately cease any suspension of Federal housing assistance programs, or any withholding of funds for such programs, and shall carry out such programs in the current and each succeeding fiscal year to the full extent possible pursuant to the contract authority or other funds appropriated or otherwise authorized or made available by the Congress for such programs in each such fiscal year.

In paragraph (2) we read:

The Secretary, in carrying out his responsibilities under this subsection, shall not withhold or delay the approval of applications for contracts under the Federal housing assistance programs, the entry into contracts under such programs, or the expenditure of funds appropriated for such programs. He further shall take no action which effectively precludes or delays the approval of applications for contracts for such programs, the entry into contracts for such programs, or the expenditure of funds appropriated for such programs.

I refer to the report of the committee, which indicates how strongly the Senate Banking Committee feels about this matter and how imperative it is that the administration recognize what we are doing in connection with this restriction. In the report we say:

In adopting this provision, the committee intends to underscore its opposition to the impoundment of funds and the suspension of housing programs authorized by the Congress, and to re-emphasize its belief that the Executive does not have the constitutional authority to suspend or terminate programs without congressional approval.

The committee took note of the testimony submitted that an estimated 600,000 low- and moderate-income housing units would be lost as a result of the moratorium on subsidized housing.

That was elicited in the course of our hearings after they said they could do something about it, and after they conferred on what the bill itself provides.

In other words, we are taking about 600,000 housing units out of the inventory at a time when we have crowded, unsanitary conditions; when we have as urgent a need for housing as we have ever had, especially for low- and moderate-income housing.

One of the shames of this country is that literally millions of American families cannot afford to buy homes—and we are not providing the kind of housing which is imperative, if they are to be in good health, let alone the environmental conditions that are consistent with a wholesome atmosphere.

We say in the report:

Furthermore, the committee is concerned that suspension of further urban renewal activities will have serious effects on efforts to revitalize our cities. During extended oversight hearings this year, the committee has heard over and over again from witnesses that continued program interruptions would have disastrous impact on local, State, and individual efforts to achieve decent housing for all.

If this resolution did not contain this language, it would mean that we would again, have another year in which nothing was done to solve our problems. The administration would take no action. Action is what the committee is seeking in the resolution. We say in our report:

The committee heard substantial testimony indicating that housing for the elderly would be particularly harmed by the Executive cutbacks and that declines in housing production and employment would have far-reaching implications.

It is true that today we have less unemployment than we have had for some time. But just yesterday it was disclosed that the economy has slowed down, and that may have a good influence in stemming inflation. But the gross national product is below the trend rate which would keep people employed. There is every indication that that is going to continue. That means help in fighting inflation; but it can have a disastrous effect on the housing situation in the country, because it occurs at the very time when interest rates are once again coming close to an all-time record. We should recognize that housing is most sensitive to high interest rates. Higher interest rates mean that housing costs will increase sharply. With every fraction of a percent increase in interest rates, hundreds of thousands of people cannot afford to buy homes. We recognize that to stop these programs at this time is particularly bad.

Particular concern was expressed regarding the impact of the impoundment of some $72 million in funds and the suspension of approvals for rehabilitation loans under the Section 312 loan program. These low interest loans to property owners in renewal areas have, according to testimony received from many mayors, successfully checked trends towards deterioration and abandonment in many cities across the Nation.

While the Committee supports Executive efforts taken in conjunction with Congress to control inflation, the Committee believes that restoration of the programs to the level authorized by Congress is needed to assure achievement of our housing goals.

The Committee supports the idea that many of our housing and community development programs must be reevaluated to determine if they are conceptually sound and administratively workable. Also, there is considerable agreement that many of these programs need changes and improvement both from the administrative and legislative viewpoint. However, the Committee opposes the suspension and effective termination of these programs during such a reevaluation. The Committee believes such actions to be counterproductive to meeting the goal established by Congress in the 1968 Housing Act of building 6 million housing units for low- and moderate-income families over a 10-year period.

In adopting this action to end the moratorium, the Committee realizes the effect of the administrative difficulties in proceeding with the immediate processing of the backlog of applications now subject to the moratorium. It is, therefore, the Committee's intent that the Secretary of HUD proceed with project approvals at an orderly and reasonable rate not inconsistent with the processing rate prior to the moratorium.

This was not an amendment that simply was cavalierly or casually accepted by the committee. It was debated and considered. It was agreed to by a vote of 11 to 3. It was an amendment supported by both Republicans and Democrats. It was an emphatic assertion of the insistence by the committee that the mortarium end, end promptly; that there is a desperate, serious housing need in our country; that it is necessary to have these programs resumed as soon as possible.

I thank the manager of the bill, and I yield the floor.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. PELL. Mr. President, I call up my amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

At the end of the joint resolution, add the following:

ADMINISTRATIVE PRIORITY FOR APPLICATIONS RELATING TO ACTIVITIES IN AREAS AFFECTED BY BASE CLOSINGS

SEC. 15. The Secretary of Housing and Urban Development, in processing and approving applications for assistance under section 103 of the Housing Act of 1949, section 111 of the Demonstration Cities and Metropolitan development Act of 1966, section 708 (a) (1) and (2) of the Housing and Urban Development Act of 1965 (for grants authorized under section 702 and 703 of such Act), section 312 of the Housing Act of 1964, section 701(b) of the Housing Act of 1954, and section 708 of the Housing Act of 1961, shall give a priority to any State or unit of local government or agency thereof which is severely and adversely affected by a reduction in the level of expenditure of employment at any Department of Defense installation located in or near such State or unit of local government.

Mr. PELL. Mr. President, I ask unanimous consent that the names of Senators PASTORE, KENNEDY and BROOKE be added as cosponsors of the amendment.

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

Mr. PELL. Mr. President. I offer this amendment to House Joint Resolution 512 in order to establish a priority in the processing and approving of applications for certain housing and urban develop-

ment programs for States and communities hard hit by Defense Department realignments.

As many of my colleagues know, many of our States and communities have suffered as a severe economic blow in recent months as a result of base closures and transfers, but none were hit as hard as Rhode Island.

For in Rhode Island the impact is the most severe in the Nation. An unemployment rate of nearly 11 percent has been projected for my State.

If Rhode Island and the other States hard hit by this recent wave of base closures are to recover, it is essential that they receive the aid necessary to reconvert in an expeditious manner.

Unfortunately, due to the regulations now existing for many of the housing and urban development programs, reconversion assistance to the States such as Rhode Island would not be forthcoming for many years, regardless of the expressed desires of the administration or the Congress, because of the very complicated project evaluation system that now exists.

If Rhode Island and the other States hard hit by defense closures are to reconvert, it is essential that they receive substantial financial aid in the coming year.

The amendment that I am offering will allow the Department of Housing and Urban Development to give priority to States and communities in the coming year which are hard hit by defense closings.

This assistance is badly needed for a number of reasons.

First, if abandoned naval facilities such as Quonset Point are to be reconverted to industrial use, significant water and sewer facilities must be constructed in order to serve the new facilities on those naval facilities.

This goal can be accomplished by giving local communities of this nature a priority in the application process.

Second, most of the local communities such as Newport and North Kingstown, R.I., do not have a sufficient planning staff as is required to prepare properly for the drastic change in the economic base of their towns from naval usage to industrial purposes.

This goal can only be accomplished by giving those communities and States a priority in the application process for additional moneys in the comprehensive planning program.

Third, in the areas surrounding the defense bases that are being closed, there is a definite requirement for a substantial amount of urban renewal and rehabilitation work to be accomplished if a successful reconversion program is to be implemented.

To accomplish this goal, it is necessary to give impacted States and communities in the coming year a priority under the rehabilitation loan program and the urban renewal program.

Fourth, in Rhode Island and other States much land, such as the islands on Narragansett Bay, is being abandoned.

With the use of the open space land program, these naval lands can be saved from unnecessary real estate speculation and be preserved for recreation and conservation areas.

Fifth, if our impacted communities attempt to reconvert from the loss for their naval base, they will need to build new neighborhood facilities to replace those naval facilities that are being shut down.

And for this reason, it would be helpful for these communities to be given a priority in the neighborhood facilities grant program.

Mr. President, I have outlined the primary need for giving impacted communities and States a priority in the housing and urban development programs.

A secondary reason and a reason of equal importance is that these States and communities need additional Federal spending to replace the Federal spending that is being lost by the base closings.

The housing and urban development programs that I have outlined are to a limited extent helping prime the pumps for these communities and States and will mitigate the loss of defense jobs by providing spending for new jobs for the construction industry.

Mr. President, this is a simple amendment. It does not require additional funding. It fits into the spirit of President Nixon's announcement that all efforts will be made to expedite assistance through existing programs for communities and States hard hit by defense closings. This is a needed amendment, and I asked that it be accepted.

Mr. SPARKMAN. Mr. President, I have discussed this matter with the Senator from Rhode Island. I have read the amendment. It seems to me that it seeks simply to do justice. It is a reasonable provision for those people who have been imperiled under the conditions described by the amendment. For my part, I am willing to accept the amendment.

Mr. TOWER. Mr. President, I certainly am in sympathy with what the distinguished Senator from Rhode Island is doing. We have suffered adverse impact in my State from base closings, nothing approaching the magnitude of what has happened in Rhode Island.

As a member of the Committee on Armed Services, I sat in on the hearings in connection with the base closings in Rhode Island, and I am impressed with the adverse impact in that State. I am willing to accept the amendment of the Senator from Rhode Island and to go to conference with it.

Mr. PELL. I thank my colleagues very much.

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

Mr. PELL. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. Who yields time?

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

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

At the end of the joint resolution, add the following:

ECONOMIC STABILIZATION

SEC. 15. Section 203 of the Economic Stabilization Act of 1970 is amended by adding at the end thereof the following new subsection:

"(k) In exercising the authority conferred by this section prior to September 12, 1973, with respect to the price level of beef, the President or his delegate shall permit the passthrough of increases in raw agricultural product costs incurred since June 8, 1973, on a dollar-for-dollar basis in the same manner and to the same extent as a passthrough of such increases is permitted in the case of meat and food products other than beef."

Mr. TOWER. Mr. President, phase 4 is upon us. Guidelines have been issued and proposed regulations are circulating for comment. Unfortunately, comment alone will not alleviate the severe posture in which the beef industry now finds itself as a direct result of the continued administratively imposed price ceilings on beef products. Since March 29, beef prices have been subject to ceilings, and the administration now proposes to prolong those curbs until September 12, while lifting ceilings on other food products in order to permit a dollar-for-dollar pass through reflecting increased costs of raw agricultural products.

When questioned on Wednesday concerning the continued controls on beef, Secretary Shultz responded that cattlemen may count on the September 12 date as being the moment for elimination of ceilings, and with such assurance they can now make their plans accordingly. Mr. President, cattlemen and meatpackers in my State have advised me during the past 2 days that the only plans they can make based on continued controls are plans to cease their operations entirely or at a minimum drastically curtail production from current levels.

Indeed, shortages have occurred in past months at meat counters throughout this Nation, but they in no way will compare with those we will encounter during the next few months should the worst fears of those in the industry prove well founded.

On yesterday, a meatpacker from south Texas graphically underscored for me effects of continued controls on his own operation, a plant of some 250 employees processing approximately 1,800 head of cattle per week. Under continued controls as currently levied, he can plan on a net loss per head of $5, or $9,000 per week. Mr. President, the margin upon which a packer bases his operation is not excessive, in fact it is often minimal, and I know of few companies in the packing industry that can absorb losses of this magnitude until September 12. It is nice to be able to plan for the future, but not when those plans include continued heavy financial loss, drastic curtailments of production, eventual closing of operations, and the resultant firing of employees.

This morning's press warns of black-market dealings and under-the-counter transactions. Without question shortages will result in the supermarkets—not tomorrow, or next week, but barring a relaxation of the controls on beef, such

as has been granted for other agricultural and meat products, anyone planning a barbecue in September or October might be well advised to purchase the meat before too many days have passed. It simply will not be available in the fall.

Mr. President, I do not question that the retail price of beef would increase as a direct result of the removal of controls. This is recognized by all. But, perhaps far better to confront slight increases in cost today when supplies can be obtained in the supermarket than to confront even greater increases, compounded by shortages in supply, several weeks from now when controls are lifted.

Would it not be more desirable to pay a few cents per pound more now, and be able to purchase and consume the meat, than to be willing to pay even higher prices in September and find the product unavailable in the market?

On June 29, I introduced legislation to remove price controls from meat, poultry and dairy products and feed grain ingredients. I am pleased that the administration, in phase IV, has followed my proposal as reflected in its lifting of controls on each of these products save beef. A first important step has been taken, but until beef is treated likewise, the continued economic stricture is far from equitable and in the long run self-defeating. Therefore, Mr. President, I am today proposing an amendment to the pending legislation which would permit the same dollar-for-dollar passthrough of costs for beef as has been established under phase IV for other food products.

Perhaps it was intended that the September 12 date for the removal of controls on beef would inspire those in the industry to "tighten their belts" and "hold on" for the relief in sight. Unfortunately, inspiration alone will not keep a processing plant in operation when losses exceed profits to such tremendous extents as have been experienced.

And, unfortunately, inspiration alone will not provide a filling meal to those American families who in the early fall seek beefsteak for their tables.

I urge my colleagues to support my amendment.

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

Mr. TOWER. I yield.

Mr. CURTIS. I ask the Senator to have my name added as a cosponsor of this amendment.

Mr. TOWER. I intended to do so at the conclusion of my remarks.

Mr. President, I ask unanimous consent that the name of the distinguished Senator from Nebraska be added as a cosponsor of the amendment.

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

Mr. CURTIS. Mr. President, the Senator is to be commended for his amendment. It will lead to further production and ultimately to a greater amount of beef, which means lower prices. Unless it is done, a greater number of packing plants are going to close.

This morning I received information by telephone that a packing plant in a small city will close within about a week if they are forced to sell their product at a substantial loss.

Mr. TOWER. I thank the Senator from Nebraska.

Mr. President, I should like to note that the cattle runs in 11 midwestern markets today were down almost 90 percent from normal. In Sioux City, Peoria, Omaha, Kansas City, St. Louis, St. Joseph, and Sioux Falls, there was a total cattle run today of 975, as compared to a normal run of 9,000. That is the shortage we are facing.

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

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

Report from 7 of the 11 midwest markets on number of cattle run today—July 20, 1973

Today	*Market*	*Normal*
200	Sioux City	2,000
25	Peoria	600
300	Omaha	2,000
100	Kansas City	1,500
100	St. Louis	1,000
200	St. Joseph	1,000
50	Sioux Falls	900
975, total		Total, 9,000

Source: National Independent Meat Packers Association.

Mr. TOWER. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

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

Mr. TOWER. I yield.

Mr. DOLE. I ask the Senator to have my name added as a cosponsor of the amendment.

Mr. TOWER. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Kansas (Mr. DOLE) be added as a cosponsor of the amendment.

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

Mr. DOLE. Mr. President, I should like to associate myself with the remarks of the distinguished Senator from Texas. I point out that the same is true in Kansas as in Nebraska and Texas and wherever beef is produced. We have had one packing plant closed in the last 24 hours, with a possibility of two other closings within the next 24 hours. So I strongly support the amendment of the Senator from Texas.

Mr. TOWER. I thank the Senator from Kansas.

Mr. PASTORE. Mr. President, I have a strong feeling that this is not the proper place for this particular amendment. I certainly raise a point of order.

Mr. President, I raise the point of order.

The PRESIDING OFFICER. The point of order is not in order until time is expired.

Mr. TOWER. Mr. President, obviously the point of order is going to be raised. Let me simply say that, if we do not do something like this, we are not going to have beef. I just read the runs of cattle today in 11 Midwest markets, and it shows 975 compared with 9,000 normally. Mr. President, if you want no steak at $1 but plenty of steak at $2, that is your option. But, if you mess around with this kind of thing, we are going to be facing serious food shortages throughout the country, and that is why the freeze has been lifted on other foods. If Senators want to tell the American housewife right now that "she ain't going to have no beef," that is what we will be telling her.

Mr. PASTORE. I understand the enthusiasm and the spirit of the Senator from Texas and I understand his parochial problem, as well. But I doubt very much that it is the kind of amendment to be brought up under this bill. That is my only objection. There might be justification for everything the Senator says. I do not quarrel with that. I say this matter should be thrashed out.

The President has just announced phase 4 and the Senator is repudiating the President's phase 4 without giving it a chance to operate. Under the President's program the ceiling on beef products would go off in September. The Senator wants to do it now. I am only saying that this is not the proper time or the proper place. In addition, the consumer interests should be taken into account. If we are going to have beef it might be better to have it at higher prices, but I am saying that this is a HUD bill and the Senator is talking about beef.

Mr. TOWER. The Senator from Rhode Island is not going to make me self-conscious about this bill when we have nongermane items placed on every bill I handle that comes through the Senate. Then, we either get them thrown out in conference, or we never get to conference. We have two vital conferences going on now where the Senate insisted on nongermane amendments. The bills are still languishing in conference. I do not have a sense of guilt or self-recrimination.

Mr. PASTORE. I do not want to wound the Senator's conscience. All I am saying is, give the President a chance. He has said, "Wait until the 12th of September." Let us wait until the 12th of September.

Mr. President, I raise a point of order.

Mr. TOWER. I hope the Senator has the same spirit about helping the President in everything else that comes before us. If so, I would be happy to join him.

Mr. PASTORE. There are some issues that I agree with him on and there are some that I do not, but I dare say that I side with him more times than some Senators on the other side of the aisle.

The PRESIDING OFFICER. The point of order is not in order.

Mr. TOWER. Mr. President, I yield back my time.

Mr. PASTORE. I raised a point of order.

The PRESIDING OFFICER. The point of order is now in order. The amendment clearly introduces a new subject and, therefore, is not germane.

Mr. BAYH. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment as follows:

On page 8, between lines 15 and 16, insert the following:

"(c) The Government National Mortgage Association shall continue to purchase mortgages with respect to which commitments to insure under the National Housing Act

were issued prior to July 1, 1973, in the same manner and on the same terms and conditions as such Association purchased such mortgages prior to June 1, 1973."

Mr. BAYH. Mr. President, I have discussed this amendment with the distinguished Senator from Alabama and the distinguished Senator from Texas. This deals with the very simple problem. It applies to the last 2 or 3 days or perhaps the last week of the last fiscal year in which those individuals who had been granted FHA mortgage capability pursuant to the provisions of the statute went to GNMA to have them purchase these commitments and GNMA had run out of money after the commitment had been made by FHA earlier. This would require commitments made in the last fiscal year to be funded.

Mr. SPARKMAN. Mr. President, the Senator from Indiana has discussed this matter with me. I am willing to take it to conference. I would like to say this. I am not certain this will do the job that we want done. The Senator has stated the situation correctly. Certainly, it is one that should be remedied, but between now and the time we hold the conference we will do our best to find out what needs to be done to get these commitments honored.

So far as I am concerned, I am willing to take it to conference.

Mr. TOWER. Mr. President, I have discussed this matter with the Senator from Indiana, and I am perfectly willing to accept it. I am in sympathy with what he is trying to do.

Mr. BAYH. I do not want to interpose my knowledge in this very complicated, important field over that of my two friends from Alabama and Texas, who deal with this at the committee level day in and day out. If they find some other vehicle which is more applicable, I will abide by their judgment. It seems to me that if we get a commitment we should not leave some builders hanging by their teeth.

Mr. SPARKMAN. But the question is whether or not Ginnie Mae has the funds or the ability to get the funds. I believe if the Senator will examine the law, it is under the direction of the President. In other words, the President has to make the funds available to Ginnie Mae, but we can check into that. We may have to do something, but I am glad to associate with the Senator, and I appreciate his thoughts on the matter.

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

The amendment was agreed to.

Mr. MONDALE. Mr. President, at this point I would like to check with the distinguished floor manager and propose an amendment from a measure which I offered in bill form a year ago to reduce the FHA mortgage insurance premium by 50 percent.

As the Senators know the FHA has collected over $4 billion in insurance premiums since the commencement of the FHA program. They now have in surplus nearly $2 billion of homeowner insurance premiums in excess. The premium which the homeowner pays if the mortgage is FHA insured amounts to one-half of 1 percent of the total that he owes.

In the typical State, there are thousand and thousands of homeowners whose costs of housing are excessive, in part because of these unnecessarily high insurance premiums.

As the interest rates on mortgages rise—and they are rising again—the addition of this one-half of 1 percent, it seems to me, is especially unwarranted.

Last year when I introduced this bill we found we had 128,000 homeowners with FHA mortgage insurance since the time the program went into effect. About 73,000 of them are now paying FHA mortgage insurance.

Mr. SPARKMAN. Mr. President, will the Senator yield to me?

Mr. MONDALE. Yes, I am glad to yield.

Mr. SPARKMAN. Is the Senator offering an amendment?

Mr. MONDALE. I want to describe the amendment and then get the reaction of the Senator.

Mr. SPARKMAN. I think we have to yield the Senator time. How much time does the Senator want?

Mr. MONDALE. I would like 10 minutes, if I may. I may not need all of that, and then I would like the floor managers to respond. I think this is a chance to save the homeowners money.

Mr. President, I will do it in 5 minutes because of new information that just came to my attention.

Mr. President, in Minnesota the average homeowner mortgage insured by FHA last year was $19,000. By reducing the FHA insurance premium in half, we could save the average homeowner approximately $1,000 during the course of the purchase of that home. We could do so without impairing the security of the FHA funds. We could permit more average Americans to own their own homes. We would make FHA insurance more attractive, and it is a program that is in deep trouble.

I think, for all of those reasons, this amendment makes sense.

In addition to the proposal for reducing the premium, which I think becomes imperative now as interest rates rise, we also ask FHA to prepare a report detailing the impact of this cut and what should be done over the long run to this program.

I ask the page to take a copy of my amendment to the distinguished floor manager of the bill.

Mr. SPARKMAN. Mr. President, has the amendment been reported?

The PRESIDING OFFICER. No.

Mr. MONDALE. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. MONDALE. Mr. President, I ask unanimous consent to dispense with further reading of the amendment and ask that it be printed in the RECORD.

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

The amendment is as follows:

At the end of the resolution add a new section as follows:

That (a) the insurance premium for any mortgage insured by the Secretary of Housing and Urban Development under the National Housing Act, or any Act supplementary thereto, shall not exceed one-fourth of 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time. With respect to any such mortgage which is outstanding on the effective date of this section, the Secretary shall adjust the insurance premium applicable to such mortgage in conformity with this section at such time (not later than 12 months after such effective date) as the next annual premium amount for such mortgage is determined.

(b) This section takes effect upon the expiration of 30 days after the date of enactment of this Act.

SEC. 2. (a)(1) The Secretary of Housing and Urban Development shall, not later than 90 days after the date of enactment of this Act, report to the Congress his recommendations with respect to transferring as large a part as practicable of the reserves of the Mutual Mortgage Insurance Fund, created by section 202 of the National Housing Act, to the General Insurance Fund and the Special Risk Insurance Fund, created respectively by sections 519 and 238(b) of such Act. In making such recommendations the Secretary shall have regard to (A) the fact that the General Insurance Fund and the Special Risk Insurance Fund are now the principal funds for carrying out the home mortgage insurance programs administered by the Secretary, (B) the fact that the reserves of the Mutual Mortgage Insurance Fund were accumulated in significant part through premium payments by mortgagors whose interests in the properties covered by insured mortgages have been transferred, and (C) the paramount interest of the Government in view of the ultimate underwriting of risk by the United States and the importance of spreading the risk over an extended period of time.

(2) The report required under paragraph (1) shall also include the recommendation of the Secretary with respect to a reduction of the premium for the insurance of any mortgage by the Secretary to a level lower than one-fourth of 1 per centum per annum of the amount of the outstanding principal obligation of the mortgage. If the Secretary determines that it is not practicable to recommend a reduction of the premiums below one-fourth of 1 per centum per annum or if he determines that a premium greater than one-fourth of 1 per centum per annum is necessary then he shall recommend that minimum per centum which he deems to be feasible not to exceed four-tenths of 1 per centum per annum. In making any such recommendation the Secretary shall have regard to the recommendations made under paragraph (1) and shall indicate the actuarial factors assumed.

(3) The report required under paragraph (1) shall also include the Secretary's recommendation with respect to the feasibility of reducing administrative costs by eliminating mortgage insurance premiums in the case of that class of mortgages for the insurance of which premiums are now collected and deposited in the Special Risk Insurance Fund, and his recommendations for reducing mortgage insurance operating expenses in other areas.

(b) In addition to the report specified in subsection (a), the Secretary shall report annually to the Congress (1) his analysis of the financial condition of each of the mortgage insurance funds administered by him in the light of the then current risk experience and actuarial assumptions, and (2) his recommendations, on the basis of such analysis, of the appropriate mortgage insurance premium levels. The first such report shall be made not later than one year after the date on which the report required under subsection (a) is submitted, and subsequent reports shall be made at annual intervals thereafter.

Mr. SPARKMAN. Mr. President, I yield myself 3 minutes.

I naturally have a great deal of sympathy for the proposal of the Senator from Minnesota, but this is one of those things that is not quite as simple as it sounds. After all, the payment which the Senator proposes to cut in two was established for the purpose of supporting and maintaining this program.

I am certain that there is one hand more than is needed immediately, but I think before we could afford to take this kind of amendment, we would want to have hearings. I remember when the question came up many years ago of cutting the premium on the Federal Deposit Insurance. We had lengthy hearings. As a matter of fact, we did not provide for a reduction the first time around, but after another year's time, we went into the question and decided it could be cut. Since that time I believe we have cut the premium on the FDIC.

Much as I sympathize with the objective of the Senator, I do not think we ought to go after something that has the import and impact of this proposal just on the Senate floor without having the facts and figures.

Mr. TOWER. Mr. President, if the Senator will yield, I might comment about the insurance funds. As I recited a minute ago on the amendment to delete section 14, the General Accounting Office testified that as of June 1973 it was estimated that insurance reserves of the special risk insurance fund would show a deficit of $290 million, and as of June 1974 these reserves would show a deficit of about $524 million. Also, regarding the general insurance fund, it was estimated that the reserves as of June 1973 would show a $118 million deficit, and it was projected to further decrease to a $353 million deficit by June 1974.

So I think it would have to be something we would have to look into very closely.

Mr. SPARKMAN. I believe so. If there is a real desire to look into this, if the Senator from Minnesota would introduce a bill, I would be very glad—I hope the Senator from Texas will join me in this statement—to hold hearings to find out the facts about it.

Mr. TOWER. I will be delighted to join in that statement.

Mr. SPARKMAN. But I do not believe this is the way we ought to deal with these funds that play such an important part in supporting the housing program.

Mr. MONDALE. I thank the distinguished floor manager of the bill. I think the losses the Senator from Texas referred to are the reductions under the so-called necessary reserves, which are based upon loss ratios established in 1935. The FHA has a sexual attachment to this fund——

Mr. TOWER. What kind?

Mr. MONDALE. Sexual—s-e-x-u-a-l. They do not care what happens to the average homeowner; they have to have their 1½ of 1 percent.

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

Mr. MONDALE. Mr. President, may I have 2 more minutes to complete this?

Mr. SPARKMAN. I yield 2 minutes to the Senator.

Mr. MONDALE. They have nearly $2 billion in excess, this at a time when housing costs are rising dramatically, interest rates are rising dramatically, the reserves of FHA are rising dramatically. They continue to insist on assessing a premium that has no relation to losses.

I am hopeful we can have those hearings, and I am pleased to hear the floor manager say we can, because that bill, for some reason, has been languishing with no hearings at all for a year.

On that basis, I will withdraw my amendment, and I thank the floor manager.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. SPARKMAN. Mr. President, may I ask if the amendment was withdrawn?

The PRESIDING OFFICER. It was.

Mr. TOWER. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TOWER. 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. TOWER. Mr. President, I move third reading.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the joint resolution.

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

The joint resolution (H.J. Res. 512) was read the third time.

Mr. SCHWEIKER. Mr. President, I support the resolution which we are considering today, House Joint Resolution 512, to extend the authority for housing and urban renewal projects for 1 year to June 30, 1974. It is very important that we continue these programs at a viable level during the interim period before we establish new housing and community development legislation.

An important feature also contained in this resolution is an increase in authority for section 236, rental housing, since many of these projects are used to establish housing for the elderly, a critical area of need.

This resolution contains another feature important to thousands of homeowners in many urban areas. Under existing law, purchasers of homes under the FHA section 235 homeowner program can receive compensation for defects that existed at the time of purchase and which could have been disclosed by a proper inspection by the FHA appraiser at the time of the purchase. The provision contained in this resolution would such extend coverage to homes financed under the FHA unsubsidized insurance programs under FHA sections 203 and 221.

In Philadelphia alone it is estimated that there are as many as forty thousand families living in such housing, and many of these homes contain defects which should have been caught at the time of inspection. Violations of local housing codes and violations of FHA minimum property standards would be added to the defects which can require howeowner compensation payments. Finally, HUD would be required to take all steps necessary to notify homeowners of their rights under the defect compensation section.

Many low-income persons have bought homes under FHA programs with confidence in the quality of the FHA inspections and approval process, and too many of these homeowners have suffered because of major defects in these homes requiring costly repairs that should have been revealed through inspection prior to the purchase.

"Buyer beware" should not apply to housing which is bought under the guidelines of the Federal Government. These new provisions should provide real incentives for FHA personnel to provide thorough inspections which protect low-income homeowners from housing defects.

I strongly urge this body to pass this important piece of legislation.

Mr. KENNEDY. Mr. President, today Congress has the opportunity to clearly indicate to the President its intention to reassert its constitutional responsibility to the American people by extending Federal housing, urban renewal and model cities programs.

The administration's decision to freeze all new Federal subsidies for low and middle income housing, all subsidies for public housing for the poorest of our citizens, and to freeze model cities and urban renewal grants after June 30, 1973, was taken without even the most perfunctory consultation with the Congress and its committees. This represented the worst form of government, government by challenge and conflict, in which the executive asserts for itself the power to totally alter established Federal policy and to void the impact of laws approved by the Congress.

In my own State of Massachusetts, the impact of the administration's decision has severely restricted the availability of housing and the availability of jobs and has resulted in incalculable hardships to many of its citizens.

HUD officials have recently studied the impact of the decision. In Massachusetts alone, the freeze has left them with applications for 1,200 units of public housing, 10,000 units of section 236 and 1,200 units of section 235 low and middle income housing. In addition, the estimated State-wide loss of the number of units of housing as a result of the Federal moratorium, from January 5, 1973 through fiscal year 1974, is placed at 12,869 units at an annual subsidy loss of 16.8 million.

It is evident that the impact of this decision extends beyond housing needs alone. For it is a body blow to employment in the construction industry and in related industries. In Massachusetts alone, construction of the units now frozen would have pumped over $250 million into the State's economy.

Thus, this decision has resulted in the delay and even the loss of decent housing to a substantial number of Massachusetts citizens because of the unilateral and

highly arbitrary decision to freeze Federal housing subsidies.

It is essential that the moratorium on Federal housing subsidies and on model cities and urban renewal program be ended. I agree that a review of the programs should be an on-going concept, but not at the expense of the millions of Americans who depend on these programs for a decent home.

I have expressed my opposition to the freeze previously and I urge the Members of Congress to override this decision which seriously endangers the constitutional mandate of the separation of powers, by approving House Joint Resolution 512.

I ask unanimous consent to have placed in the RECORD the estimated impact on housing programs prepared by the Massachusetts Department on Community Affairs.

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

ESTIMATED MASSACHUSETTS STATEWIDE LOSS OF NUMBER OF UNITS OF HOUSING DUE TO FEDERAL MORATORIUM, JANUARY 5, 1973, THROUGH FISCAL YEAR 1974

ANNUAL SUBSIDY

Public housing, 2,636 units, $4.8 million.
Section 236, 3,049 units, $4.2 million.
Section 235, 2,950 units, $2.6 million.
Section 117, 900 units, $1.8 million.
HUD total, 10,335 units, $13.4 million.
Massachusetts Housing Finance Administration, 1,984 units, $3.1 million.
Farmers Home, 550 units, $220,900.
Total for Massachusetts, January 5, 1973 through fiscal year 1974, 12,869 units, $16.8 million.

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

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

The PRESIDING OFFICER. All time on the joint resolution having been yielded back, the question is on final passage. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from North Carolina (Mr. ERVIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL) would vote "yea."

Mr. SCOTT of Pennsylvania. I announce that the Senator from New Hampshire (Mr. COTTON), and the Senator from Arizona (Mr. GOLDWATER) are absent because of illness in their respective families.

The Senator from Alaska (Mr. STEVENS) is absent by leave of the Senate on account of illness in his family.

The Senator from New York (Mr. BUCKLEY), the Senator from Colorado (Mr. DOMINICK), the Senator from Michigan (Mr. GRIFFIN), the Senator from Illinois (Mr. PERCY), the Senator from Ohio (Mr. SAXBE), the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Virginia (Mr. SCOTT) is absent on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "yea."

The result was announced—yeas 81, nays 0, as follows:

[No. 313 Leg.]

YEAS—81

Aiken	Fong	Montoya
Allen	Fulbright	Moss
Baker	Gurney	Muskie
Bartlett	Hansen	Nelson
Bayh	Hart	Nunn
Beall	Haskell	Packwood
Bellmon	Hatfield	Pastore
Bennett	Hathaway	Pearson
Bentsen	Helms	Pell
Bible	Hollings	Proxmire
Biden	Hruska	Randolph
Brock	Huddleston	Ribicoff
Brooke	Hughes	Roth
Burdick	Humphrey	Schweiker
Byrd, Harry F., Jr.	Inouye	Scott, Pa.
	Jackson	Sparkman
Byrd, Robert C.	Javits	Stafford
Cannon	Johnston	Stevenson
Case	Kennedy	Symington
Chiles	Long	Taft
Church	Magnuson	Talmadge
Clark	Mansfield	Thurmond
Cook	Mathias	Tower
Curtis	McClure	Tunney
Dole	McGee	Weicker
Domenici	McIntyre	Williams
Eagleton	Metcalf	
Fannin	Mondale	

NAYS—0

NOT VOTING—19

Abourezk	Goldwater	Saxbe
Buckley	Gravel	Scott, Va.
Cotton	Griffin	Stennis
Cranston	Hartke	Stevens
Dominick	McClellan	Young
Eastland	McGovern	
Ervin	Percy	

So the joint resolution (H.J. Res. 512) was passed.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPARKMAN. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House of Representatives thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. HELMS) appointed Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS, Mr. STEVENSON, Mr. TOWER, Mr. BENNETT, and Mr. BROOKE conferees on the part of the Senate.

Mr. ROBERT C. BYRD subsequently said: Mr. President, earlier today, during the consideration of H.J. Res. 512, the distinguished Senator from Alabama (Mr. SPARKMAN), manager of the bill, offered a substitute to an amendment which was pending and which had been offered by the distinguished ranking Republican member of the committee, Mr. TOWER. The Sparkman substitute was adopted by the Senate, the amendment having been sent to the desk and read by the Clerk. In error, the Clerk read the wrong amendment. This is not to say it was the Clerk who made the error, but, in any event, that is what happened. The Senate, with its collective mind, adopted the Sparkman substitute, which I hold in my hand, the correctly worded language. All minds were of the opinion that the Senate was adopting this amendment, which I now send to the desk.

Mr. President, the unanimous-consent request which I am about to make on behalf of the able senior Senator from Alabama (Mr. SPARKMAN) has been cleared with the distinguished ranking minority member of the committee, the Senator from Texas (Mr. TOWER), whose amendment was amended by this amendment in the nature of a substitute offered by the Senator from Alabama.

I ask unanimous consent that House Joint Resolution 512 be reconsidered; that it be returned to the amendment stage of second reading; that it be amended by the amendment which I have just sent to the desk; that it be advanced to third reading and repassed; that a motion to reconsider be laid on the table, and that the Secretary of the Senate be authorized to make any necessary technical and clerical corrections in the engrossment of the joint resolution.

The corrected amendment is as follows:

Beginning with line 16 on page 8, strike out all through the end of the joint resolution and insert in lieu thereof the following:

EXPENDITURES TO CORRECT OR COMPENSATE FOR SUBSTANTIAL DEFECTS IN FEDERAL HOUSING ADMINISTRATION INSURED MORTGAGED HOMES

SEC. 14. (a) Section 518(b) of the National Housing Act is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following:

"(2) The Secretary is authorized to make expenditures to correct, or to compensate the owner for, structural or other defects which seriously affect the use and livability of any single-family dwelling or two-family dwelling which—

(A) is covered by a mortgage insured under section 235 of this Act and is more than one year old on the date of the issuance of the insurance commitment, if (i) the owner requests assistance from the Secretary not later than six months after the date of enactment of this paragraph, and (ii) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose; or

"(B) is covered by a mortgage which was insured under section 221(d) or 203 of this Act not more than three years prior to the date of enactment of this paragraph, if (i) the owner requests assistance from the Secretary not later than one year after the date of enactment of this paragraph, and (ii) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose.

Notwithstanding the foregoing, the Secretary may not make expenditures under this paragraph with respect to any dwelling unit which is subject to an insured mortgage on which the original principal balance exceeded the maximum mortgage amount under section 235(i) of this Act for the geographical area in which the dwelling unit is located. The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant

to this paragraph with respect to such dwelling. In carrying out the provisions of this paragraph, the Secretary shall expedite the processing of applications and furnishing of assistance to the fullest extent possible."

(b) Section 801(a) of the Housing Act of 1954 is amended by adding after the words "the beginning of construction" the following: "or substantial rehabilitation".

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia (Mr. ROBERT C. BYRD)?

The Chair hears none and it is so ordered.

PHASE IV

Mr. JAVITS. Mr. President, phase IV is the latest in a long series of economic controls by an administration that proclaims its dedication to the free market system. The premature termination of phase II produced new problems and narrowed the options available to the administration in its attempts to manage the economy. There is no doubt that the disruptive effects incurred by phase III will distort the American economy for months to come.

Phase IV is an improvement over phase III, in that it gives encouragement to increased production by allowing costs to be passed through. Price rises are inevitable, especially for food. There is little comfort for the American consumer struggling to make ends meet, but it is preferable to pay higher prices for food that is available than to pay even higher prices for limited supplies of food, which would have been the result had the freeze continued longer. The necessary termination of the freeze on most meat products, on a partial basis until September 12, and under rules similar to other sectors of the economy after that date, ought to provide an incentive for some increase in meat production. It is not going to be an easy road to recovery. Twenty-three meat packers have already shut down during the freeze, and we cannot retrieve the baby chickens and pregnant sows that have already been killed.

I approve the necessary extension of the freeze to September 12 on beef, and then its reversion to the rules applicable to other items in respect of the phase IV program. We shall do this under the exigencies imposed by the freeze and the unsuccessful phase III.

I pay tribute to labor which has shown commendable restraint, so far. Should food costs climb at the prefreeze level of 24 percent annually, there are serious danger signals ahead for a 5.5-percent wage increase standard.

It is clear that we must expand our production of agricultural commodities if we are to have sufficient supplies to feed our own people at reasonable prices, and to have surpluses available for export to the rest of the world. Similarly the American farmer must be assured that he will have reliable markets here and abroad for his expanded production. The export of our agricultural products represents one of the best ways to improve our balance of payments and stabilize the American dollar.

The continued application of export controls, while obviously inevitable in the short run, will in the long run erode our balance of payments and damage our economic relations with nations dependent on U.S. agricultural exports, especially Japan.

Phase IV does not deal satisfactorily with the energy problem. Ceiling prices will apply at both the wholesale and retail levels, except for an exemption for increased crude production. Fuel supplies, especially gasoline and heating oil, need to be allocated. Without a mandatory system for fuel allocation independent dealers will continue to be squeezed, thus restricting competition and encouraging eventual higher prices.

The President goes out of his way, as he has on previous occasions, to emphasize his desire to return to the free market system and even sets the end of 1973 as a goal for terminating controls. While I share the President's belief in a free market system under normal conditions, I point out that this eagerness to return to a noncontrolled price and wage system led to a premature termination of phase II and our present highly inflationary situation. It does not auger well for the proper administration of phase IV that there should be so much administration eagerness to end it before it has even begun.

I am disappointed that the administration has paid so little attention in its planning and its public statements to the way this program is to be run. This is an extremely complicated program requiring great expertise on the part of those administering the controls. The President's appeal to voluntarism in enforcement is meaningful only if he has the means to enforce the rules against those who do not heed the rules. How can those who cooperate be expected to carry on if they know that the standards will not be rigorously enforced against their competitors.

Finally, there must be long term planning in wage and price controls instead of the start and stop policies the administration has followed since 1971. For we should not encourage reliance on an economic slowdown during the latter part of 1973 to reduce inflation. Already the signs point to a downturn in the American economy by the end of the year, and it will require great skill in the administration's economic operations to prevent the economy from sliding from a downturn into a recession. "Fine tuning" is too dangerous where the stakes for our Nation and the world are so high.

FAIR LABOR STANDARDS AMENDMENTS OF 1973

Mr. WILLIAMS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 7935.

The PRESIDING OFFICER (Mr. NUNN) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that act, to expand the coverage of that act, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. WILLIAMS. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. EAGLETON, Mr. HUGHES, Mr. HATHAWAY, Mr. JAVITS, Mr. SCHWEIKER, Mr. TAFT, and Mr. STAFFORD conferees on the part of the Senate.

INDEFINITE POSTPONEMENT OF SENATE JOINT RESOLUTION 129

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Calendar No. 252, Senate Joint Resolution 129, providing for the temporary extension of certain Housing and Urban Development laws, be indefinitely postponed.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 306 up to and including Calendar No. 319.

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

ADDITIONAL EXPENDITURES BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

The resolution (S. Res. 137) authorizing additional expenditures by the Committee on Interior and Insular Affairs for routine purposes, was considered and agreed to, as follows:

Resolved, That the Committee on Interior and Insular Affairs is authorized to expend from the contingent fund of the Senate, during the Ninety-third Congress, $25,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act approved August 2, 1946.

ADDITIONAL EXPENDITURES BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

The resolution (S. Res. 140) authorizing additional expenditures by the Committee on Interior and Insular Affairs for inquiries and investigations, was considered and agreed to, as follows:

Resolved, That the Committee on Interior and Insular Affairs is hereby authorized to expend from the contingent fund of the Senate $4,400, in addition to the amount and for the same purposes and during the same period specified in S. Res. 231, Ninety-second Congress, agreed to March 6, 1972.

GRATUITY TO KATHERINE HILL

The resolution (S. Res. 146) to pay a gratuity to Katherine Hill, was considered and agreed to, as follows:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay,

from the contingent fund of the Senate, to Katherine Hill, widow of Thomas D. Hill, an employee of the Architect of the Capitol assigned to duty in the Senate Restaurant at the time of his death, a sum equal to nine months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

GRATUITY TO WILMA F. McGINNIS

The resolution (S. Res. 147) to pay a gratuity to Wilma F. McGinnis, was considered and agreed to, as follows:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Wilma F. McGinnis, widow of Edward F. McGinnis, an employee of the Senate at the time of his death, a sum equal to nine months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON GOVERNMENT OPERATIONS

The Senate proceeded to consider the resolution (S. Res. 131) authorizing supplemental expenditures by the Committee on Government Operations for an inquiry and investigation relating to Government procurement practices, and for other purposes, which had been reported from the Committee on Rules and Administration with amendments on page 1, after line 4, strike out:

(2) In section 5, strike out "$10,000" and insert in lieu thereof "$25,000".

At the beginning of line 7, strike out "(3)" and insert "(2)"; on page 2, at the beginning of line 1, strike out "(4)" and insert "(3)"; at the beginning of line 11, strike out "(5)" and insert "(4)"; and, at the beginning of line 12, strike out "(3)" and insert "(2)"; so as to make the resolution read:

Resolved, That S. Res. 46, Ninety-third Congress, agreed to February 26, 1973, is amended as follows:

(1) In section 3, strike out "$1,830,328" and insert in lieu thereof "$1,920,000.00".

(2) Sections 8 and 9 of such resolution are redesignated as sections 9 and 10, respectively.

(3) Insert immediately below section 7 the following new section:

"SEC. 8. From the date this resolution is agreed to through February 28, 1974, not to exceed $89,672 shall be available for a study or investigation of Government procurement practices (including a review of recommendations submitted to Congress by the Commission on Government Procurement), of which amount not to exceed $15,000 may be expended for the procurement of individual consultants or organizations thereof."

(4) In section 10, as redesignated by clause (2) of this resolution, strike out "$1,840,328" and insert in lieu thereof "$1,930,000.00".

The amendments were agreed to.

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

The title was amended, so as to read: "Resolution authorizing supplemental expenditures by the Committee on Government Operations for an inquiry and investigation relating to Government procurement practices".

PRINTING OF INAUGURAL ADDRESSES

The concurrent resolution (H. Con. Res. 185) to provide for the printing of inaugural addresses from President George Washington to President Richard M. Nixon, was considered and agreed to.

THE FEDERAL CIVILIAN EMPLOYEE LOYALTY PROGRAM

The concurrent resolution (H. Con. Res. 219) providing for additional copies of "The Federal Civilian Employee Loyalty Program," was considered and agreed to.

NATIONAL INSTITUTE OF EDUCATION

The concurrent resolution (H. Con. Res. 233) providing for the printing of committee hearings establishing a National Institute of Education was considered and agreed to.

OUR AMERICAN GOVERNMENT

The concurrent resolution (H. Con. Res. 256) to provide for the printing as a House document a revised edition of the House document "Our American Government. What is it? How Does It Work?" was considered and agreed to.

STREET CRIME: REDUCTION THROUGH POSITIVE CRIMINAL JUSTICE RESPONSES

The concurrent resolution (H. Con. Res. 257) providing for the printing of additional copies of the House report entitled "Street Crime: Reduction Through Positive Criminal Justice Responses" was considered and agreed to.

DRUGS IN OUR SCHOOLS

The concurrent resolution (H. Con. Res. 258) providing for the printing of additional copies of the House report entitled "Drugs in Our Schools" was considered and agreed to.

RECYCLED WOOL

The Senate proceeded to consider the bill (S. 1816) to amend the Wool Products Labeling Act of 1939 with respect to recycled wool which had been reported from the Committee on Commerce with an amendment on page 2, line 3, after "(b)", strike out "Subsections" and insert "Subsection (d) is deleted and subsections"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2(c) of the Wool products Labeling Act of 1939 is amended to read as follows:

"(c) The term 'recycled wool' means (1) the resulting fiber when wool has been woven or felted into a wool product which, without ever having been utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state, and (2) the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state."

(b) *Subsection (d) is deleted and subsection* (e), (f), (g), (h), and (i) of section 2 of such Act and all references thereto are redesignated as subsections (d), (e), (f), (g), and (h), respectively.

(c) Section 2(d) of such Act (as redesignated by this section) is amended by striking out ", reprocessed wool, or reused wool" and inserting in lieu thereof "or recycled wool".

SEC. 2. Section 4(a)(2)(A) of the Wool Products Labeling Act of 1939 is amended—

(1) by striking out "(2) reprocessed wool; (3) reused wool" and inserting in lieu thereof "(2) recycled wool";

(2) by striking out "(4)" and inserting in lieu thereof "(3)"; and

(3) by striking out "(5)" and by inserting in lieu thereof "(4)".

SEC. 3. The amendments made by this Act shall take effect with respect to wool products manufactured sixty days after the date of enactment of this Act.

The amendments were agreed to.

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

PROHIBITION OF REDUCTION IN FOREST SERVICE EMPLOYEES

The Senate proceeded to consider the joint resolution (S.J. Res. 134) to prohibit any reduction in the number of employees of the Forest Service during the current fiscal year.

Mr. MANSFIELD. Mr. President, I want to commend the chairman, the Senator from Georgia (Mr. TALMADGE), and the distinguished members of the subcommittee, especially Mr. EASTLAND, Mr. AIKEN, Mr. HUDDLESTON, Mr. BELLMON, and Mr. HUMPHREY, for the detailed consideration they have given to the crisis that confronts the Forest Service and our national forests. Their diligence and careful examination of the issues represents a bipartisan approach. The resolution starts with the foundation fact that, if the national forests are going to meet their capacity to provide all Americans with the goods and services they are capable of producing, then this agency must be adequately staffed. I know of no agency in the entire Federal structure that has a more sincere and capable career staff than the Forest Service. It is a prime example of a decentralized agency. It is a prime example of a dedicated agency.

The Office of Management and Budget, for reasons that totally escape me, has underwitten a series of actions that would totally disintegrate this agency. Its proposal to straightjacket the Forest Service in standard Federal regions designed for "urban-social" programs was just such a step. That has been rescinded.

In the face of a record demand and a record price for lumber, wood products, and logs, the budget for the Forest Service was slashed in counterproductive ways. The road program was cut and the burden transferred to timber sales. The result will be lost revenue, more costly roads, and complications for the timber industry. The reforestation program was cut, yet there is a clear need to upgrade the timber and conservation potential on 20 percent of the 92 million acres of commercial timber land in the natonal for-

ests. Here we are, after almost 70 years of national forest management with over 5 million acres in need of reforestation and over 13 million acres in need of stand improvement.

The committee's call for "a long-range comprhensive program for the Forest Service to expand on and replace the excellent program that President Eisenhower sent to the Congress in 1960," forms the basis for addressing a long-standing problem in a constructive way.

The committee's recommendation for a budget amendment or supplemental request for the balance of 1974 is a sound immediate action step. Thus, the resolution, which has the effect of calling for a personnel floor for full-time permanent Forest Service personnel at a figure that is about the average of the past 5 years, will at least enable the Forest Service to hold at recent levels of accomplishment. I note, however, the committee has wisely and constructively provided for recognition that the level be set so that the additional 450 personnel needed to market and add 1 billion board feet of softwood timber to the sales program can be properly realized.

I must confess that the logic that has been pursued within the administration is difficult to understand. The fact is that the kinds of activities we are talking about will bring in enough revenue so as to offset the cost and, in addition, they will stimulate future economic and conservation benefits that make "dollars and sense."

NEED FOR NEW LONG-RANGE POLICY RELATING TO NATIONAL FORESTS

Mr. HUMPHREY. Mr. President, I support Senate Joint Resolution 134. Our committee has heard from every sector that is concerned about conservation that our national forests are in jeopardy—not from malicious design but from just plain inaction and ill-conceived actions. Rising timber prices, failure to provide for basic conservation needs, atrophied long-term plans developed and implemented more than a decade ago in bipartisan unanimity, budget cuts that deny the Federal Treasury revenues that would more than offset expenditures and reduce the share of revenues hard pressed rural counties derive from the national forests and impoundments that waste more than they save, have all come forward in a budget and policy process that is totally uncoordinated.

Not one witness who came before our subcommittees in the 3 days of hearings that were held was satisfied with the executive branch posture on the national forests. Wildlife, recreation, wilderness, timbering, and every other sort of witness told us the same story. They sympathized with the plight of the other groups but told how their interest was being treated even worse.

The norm in such a situation is to have one group say that another is being favored at their expense. Instead we heard how badly all are faring in securing from the national forests the goods and services that they should be providing for the American people.

Our resolution and our report addresses the present and the future. As you know, the chairman of our committee, Senator TALMADGE, has been spending long days in another important televised proceeding. However, I want the RECORD to show that he has been giving an extra measure of time and devotion to his other important responsibilities. When we met to discuss the situation on the national forests, he had read the record, focused on the issues, and led us in defining the needs and the priorities that require attention.

First, proper personnel levels for the Forest Service; second, a proper budget level for the 1974 fiscal year; and third, a long-range program and the setting of some national goals so that the benefits that the national forests can provide are realized.

I want the President to know that the erosion of national forest conservation goals is not something that just happened yesterday.

Ever since I have been in the Senate, and when I was Vice President, I have observed how there would be a spurt forward then a settling back. We saw how President Kennedy took hold of the wonderful "Program for the National Forests," that President Eisenhower had initially developed, and moved it forward, then the impetus was lost in the latter part of the decade.

The forests are a long-term proposition and they need a long-term commitment that reaches into decades, not a 4- or an 8-year spurt. We are fast approaching the critical juncture when the sheer pressure of our growing population and the decades of neglect will place us in a vise grip. We can meet the need if we take the opportunity.

I want to thank all of those who have an interest in the future of our forest resources for the constructive testimony that they gave our committee.

Mr. PACKWOOD. Mr. President, very shortly, the Senate will be called upon to approve Senate Joint Resolution 134. I would like to take just a minute to express my absolute support for this action taken by the Agriculture Committee.

On a number of occasions, I have commented on the concern that I share with a number of my colleagues over the direction in which the administration appears to be heading in its management of our national forest system. I am increasingly concerned that responsible officials in the administration have completely lost sight of the need for long-term management of this invaluable resource. It is almost as if we are being told that a forest environment can be managed on the same day-to-day basis as the national debt.

Nothing could be further from reality. Our forest resources must be considered and managed as the long-range, infinitely substainable object it is. We simply must break out of the habit of viewing the forest as simply one more budget item that can be manipulated at the whim of some bureaucrat sitting in the Office of Management and Budget.

The forest is the economic life blood of thousands of communities not only in my home State but in many other States around the Nation. The forest is a source of relaxation and recreation for millions of Americans every year. The forest is, in short, an environment—a surprisingly fragile environment—that can only be managed on a long-term, planned basis as an investment in the total wealth of this Nation.

Senate Joint Resolution 134 recognizes this need for stable, long-term planning and management of our national forest environment. I applaud the committee for its action.

Mr. MOSS. Mr. President, I rise to commend the Senate Committee on Agriculture and Forestry for drafting and reporting this joint resolution (S.J. Res. 134) to place a floor under the number of employees in the Forest Service for the current fiscal year.

The resolution is an outgrowth of the hearings held June 26 and 27 by the Subcommittee on Environment, Soil Conservation, and Forestry on the proposal that the Office of Management of Budget had advanced to force the Forest Service regional structure to conform to the existing standard regional Federal boundaries. These hearings were instrumental in convincing the Office of Management and Budget and the Department of Agriculture that the concept was faulty and unsound and to show that it was almost universally opposed, and should be withdrawn. I am happy to say that this action has now been taken.

It became apparent during the subcommittee discussions, and has been verified in staff studies made since that time, that Forest Service personnel was being slowly reduced below the levels at which the service can efficiently perform the expanding responsibilities which are being thrust upon it because of greatly accelerated activity on many fronts—increased timber cutting and sales, increased use of Forest Service lands for recreation, and continuous and extensive grazing of livestock on forest lands, to mention three substantial activities.

In addition, it has been brought out that there are more than 5 million acres of forest land which are in need of reforestation, and some 13 million acres in need of stand improvement.

Although a primary basis for attention from a national standpoint is the growing crunch in the lumber supply industry, and the emphasis the Forest Service is being required to put into timber cutting and sales, in my State of Utah major concern centers around the massive and accelerating use of forest lands for recreation and the continuing need for their use for watershed and grazing purposes. These factors combined with some very special watershed problems on private lands interspersed within national forest lands, which require special supervision, have caused us to worry about how these forest lands, which are carrying heavier and heavier burdens, can be managed and protected by fewer and fewer personnel.

I was shocked to learn that the 1974 personnel budget request for the Forest Service is at about the 1962 level. The request is for 3,210 fewer employees than were on the job in 1967.

The resolution reported by the committee provides that during the fiscal

year ending June 1974, the number of permanent full-time people employed by the Department of Agriculture to carry out the work of the Forest Service shall be maintained at not less than 450 personnel above the June 31, 1972, full-time, permanent personnel ceiling. This means that an employment level of 20,854 would be the minimum in the present fiscal year. This is still below the effective staff operating level needed, but it is a step in the right direction in assuring that our national forest lands will be properly administered and protected.

What we have before us is a well considered plan that treats first things first. The floor for employment will hold the erosion in the ability of the Forest Service to provide multiple use benefits to all of our people. The request for a budget supplement will enable campgrounds to be serviced, watersheds protected, even an additional 1 billion board feet of timber to be sold, grazing programs to be maintained, and vital research to continue. Even more, this program will be of positive assistance in maintaining the economy, increasing Federal revenues, and helping local counties which share in these revenues.

I applaud the insight of the committee in treating basic needs of fundamental issues in a comprehensive way, while aiding us in the Intermountain States in preventing the catastrophe of an ill-conceived centralization of regional supervision.

Mr. President, I support this resolution, and ask that it do pass.

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

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That during the fiscal year ending June 30, 1974, the number of permanent, full-time employees employed by the Department of Agriculture to carry out the activities of the Forest Service shall be maintained at not less than four hundred and fifty above the June 30, 1973, permanent, full-time personnel ceiling authorized for such Service by the Department of Agriculture.

TOBACCO ALLOTMENTS IN DISASTER AREAS

The bill (H.R. 9172) to provide for emergency allotment lease and transfer of tobacco allotments or quotas for 1973 in certain disaster areas in Georgia and South Carolina was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, that concludes the call of the calendar.

FEDERAL ELECTION CAMPAIGN ACT—SUPPLEMENTAL REGULATION

Mr. MANSFIELD. Mr. President, on behalf of the Secretary of the Senate in his capacity as Supervisory Officer under the Federal Election Campaign Act, I wish to call attention to a supplemental regulation issued today by the Secretary which deals with the subject of disclosure of earmarked contributions and expenditures. The text of the regulation is as follows:

OFFICE OF THE SECRETARY
OF THE SENATE,
Washington, D.C., July 20, 1973.

SUPPLEMENT NO. 1 TO THE MANUAL OF LAW, REGULATIONS AND ACCOUNTING INSTRUCTIONS RELATING TO DISCLOSURE OF CAMPAIGN FUNDS FOR CANDIDATES FOR THE U.S. SENATE AND FOR POLITICAL COMMITTEES SUPPORTING SUCH CANDIDATES

DISCLOSURE OF EARMARKED CONTRIBUTION AND EXPENDITURES

Each candidate, political committee, and other person required to file reports under the Act who receives an earmarked contribution or makes an earmarked expenditure (including any transfer of funds) that is subject to the reporting requirements of the Act and these Regulations shall report the full name and mailing address, occupation and principal place of business, if any, of the donor or any other person who originally earmarked the contribution or expenditure; the name and address of each political committee or candidate for whom the contribution or expenditure is earmarked; and the amount of such contribution or expenditure earmarked for each such candidate or political committee and the aggregate amount earmarked for each during the calendar year.

The reporting required by this regulation shall be in addition to all other reporting of such contribution or expenditure required by the Act and these Regulations; shall be performed by all candidates, political committees and other persons receiving, expending, or transferring earmarked funds; and shall be reported together with all other required information on the appropriate Schedules A–D supplementing Senate Election Forms 2 or 3.

Definition: (To be alphabetically inserted among other definitions in the Manual of Regulations and Accounting Instructions issued by the Secretary of the Senate.)

"Earmark," "Earmarked," and "Earmarking" include all and any designations, instructions or encumbrances (including but not limited to those which are direct or indirect, express or implied, oral or written) which cause or result in all or any portion of a contribution or expenditure being made to or expended for the benefit of a specific candidate or political committee.

IN PRAISE OF JOHN ROLFSON—A FINE REPORTER

Mr. MANSFIELD. Mr. President, in Paris the other day, a long-time friend, John Rolfson, passed away.

He was the chief Paris correspondent for ABC. He was a man who had achieved a reputation for sound thinking, integrity in outlook, and dedication to his work.

John Rolfson was a graduate of the University of Montana at Missoula. He started, I believe, at station KGVO in Missoula. From there he moved to Salt Lake City and eventually to the upper echelons of fine reporters when he became associated with ABC.

None of us knew how sick John Rolfson had been. The newspaper said he had pneumonia. That was true, but he also, I find, had suffered from leukemia in recent months. When he got pneumonia that, of course, added to his complication.

John Rolfson was a good reporter. He was a good man. While he was born in California, he moved at an early age to Montana and went to school in Missoula—grade school and high school, and later at the University of Montana in the same city.

He is survived by his wife, the former Marie-Therese Debauche, two children, Eric Francois and Michelle; his mother, Mrs. Edith Rolfson, who lives in Washington with her daughter and John's sister, Mary Jean Rolfson, and another sister, Mrs. Nancy Brown of Bethesda.

The concluding words of the article entitled "In Praise of John Rolfson," are as follows:

Rolfson was a very good reporter and uncommonly retiring for his trade. I'd like to read his memoirs.

Mr. President, I wish to take this occasion to extend to his mother, his father Walter, his wife, and his children, his sisters, and his brother Robert, the deep sorrow which Mrs. Mansfield and I feel in the passing of a good friend who has served his country well and who has been a credit to his profession.

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

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

IN PRAISE OF JOHN ROLFSON

(By Bernie Harrison)

Last night's "At Ease" session with Harry Reasoner and Howard K. Smith and ABC's Washington-based reporters, it should be noted, was taped Tuesday before the news of the passing in Paris of a colleague, John Rolfson, reached New York. Otherwise the convocation would have been, perforce, a sadder one.

Rolfson, who learned he had leukemia a few months ago, was busily writing his memoirs—"and happy with what he had written," a colleague said—when the complication of pneumonia took him. He had headed the ABC News Paris bureau since 1965.

"He was more than a fine journalist," said Elmer Lower, president of ABC News. "He was a fine and gentle human being."

"I thought he was the best man we ever had on the hill," John Lynch, head of ABC's Washington bureau, mused yesterday, "and I was sorry to see him go there. He loved Paris, though."

Only 47, Rolfson, who was born in Los Angeles, moved with his family to Missoula, Mont., where his father, Walter, and a brother, Robert, still live. He took his first journalism job at the age of 16. By 1948, he had earned a bachelor's degree in history and political science at the University of Montana. After a year as an instructor there, he left for Europe, spending most of his time as a student at the Institute of Political Studies of the University of Paris.

He returned from Paris in 1950 and became news director of KGVO in Missoula. He left shortly thereafter for WNAX Radio in Sioux City, Iowa, and for two years following this assignment he lived in Washington, working as a magazine writer. He returned to radio as a member of the news staff of WMAL, then went with ABC in New York as a news writer and editor.

He returned here in 1960 as an ABC News correspondent and commentator. He spent five years here, traveling with the major candidates during the 1960 election year and becoming a close friend of defeated Republican candidate Barry Goldwater.

In Paris, he covered the Vietnam peace talks and many special assignments elsewhere, including the Middle East.

Rolfson is survived by his wife, the former Marie-Therese Debauche, two children, Eric Francois and Michelle, his mother, Mrs.

Edith Rolfson, who lives in Washington with her daughter and John's sister, Mary Jean Rolfson, and another sister, Mrs. Nancy Brown of Bethesda.

Rolfson was a very good reporter and uncommonly retiring for his trade. I'd like to read his memoirs.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

LEAVE OF ABSENCE

Mr. ROBERT C. BYRD. Mr. President, in accordance with rule V of the Standing Rules of the Senate, I ask unanimous consent on behalf of the distinguished junior Senator from Nevada (Mr. CANNON) that he be granted a leave of absence from the Senate on next Monday and next Tuesday because of a death in the family.

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

ORDER OF BUSINESS ON MONDAY, JULY 23, 1973

Mr. ROBERT C. BYRD. Mr. President, it was intended that the Senate would proceed on Monday, following the disposition of the Public Works appropriations bill, to take up S. 372, the so-called campaign financing bill. In view of the fact that the distinguished chairman of the Committee on Rules and Administration (Mr. CANNON), because of a death in the family, cannot be here on next Monday or Tuesday, the leadership will proceed—and this matter has been taken up with the other side, so that there is a full understanding all the way around—to ask unanimous consent at this time, and, having been authorized by the distinguished majority leader, I so do, that following the disposition of the bill making appropriations for Public Works on Monday, the Senate proceed to the consideration of Calendar Order No. 285, S. 1149, a bill to increase the supply of railroad rolling stock.

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

Mr. ROBERT C. BYRD. Mr. President, I further ask unanimous consent that on Monday, upon the disposition of S. 1149, the Senate turn to the consideration of Calendar Order No. 262, S. 2101, a bill to amend the Truth in Lending Act.

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

ORDER FOR RECOGNITION OF SENATOR FONG, SENATOR McCLURE, AND SENATOR ROBERT C. BYRD ON MONDAY, JULY 23, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders or their designees have been recognized under the standing order, the following Senators be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. HUGHES, Mr. FONG, Mr. MCCLURE, and Mr. ROBERT C. BYRD.

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

Mr. ROBERT C. BYRD. Mr. President, the fourth of the quartet of Senators named may or may not use his time on Monday.

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of Senators on Monday under the orders previously entered, there be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes, at the conclusion of which the Senate proceed to the consideration of the bill making appropriations for public works, H.R. 8947.

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there are various nominations that have been reported by the Committee on Armed Services today. I ask unanimous consent that the Senate now go into executive session and that the Senate proceed to the immediate consideration of those New Reports en bloc.

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

The PRESIDING OFFICER. The nominations reported earlier today will be stated.

NOMINATIONS AT THE SECRETARY'S DESK

The legislative clerk proceeded to read sundry nominations in the Army, Navy and Marine Corps, now at the Secretary's desk.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

PUBLIC WORKS APPROPRIATIONS, 1974

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 8947, with no action to be taken thereon today.

The PRESIDING OFFICER (Mr. NUNN). The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 8947) making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1974, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to consider the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ANTITRUST PROCEDURES AND PENALTIES ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the motion to reconsider the passage of S. 782, to amend the antitrust law.

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

The legislative clerk read as follows:

A bill (S. 782) to amend the antitrust laws of the United States, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider.

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion was agreed to.

ORDER FOR SENATE TO CONVENE ON SATURDAY, JULY 21, 1973, VACATED

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the previous order for the convening of the Senate tomorrow be vacated.

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

ORDER FOR SENATE TO CONVENE AT 10 A.M. ON MONDAY THROUGH SATURDAY OF NEXT WEEK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the

Senate completes its business on Monday, Tuesday, Wednesday, Thursday, and Friday next it stand in adjournment until the hour of 10 a.m. on Tuesday, Wednesday, Thursday, Friday, and Saturday, respectively.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements limited therein to 5 minutes.

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

ORDER FOR ADJOURNMENT UNTIL MONDAY AT 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 o'clock Monday morning next.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT RELATING TO HORSE PROTECTION

A letter from the Assistant Secretary of Agriculture, transmitting, pursuant to law, a report relating to horse protection, dated June 7, 1973 (with an accompanying report). Referred to the Committee on Commerce.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Actions Needed to Provide Greater Insurance Protection to Flood-Prone Communities", Federal Insurance Administration, Department of Housing and Urban Development, dated July 19, 1973 (with an accompanying report). Referred to the Committee on Government Operations.

REPORT ON GRANTS MADE TO NONPROFIT INSTITUTIONS AND ORGANIZATIONS FOR SUPPORT OF SCIENTIFIC RESEARCH PROGRAMS

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a report on grants made to nonprofit institutions and organizations for support of scientific research programs, for the calendar year 1972 (with an accompanying report). Referred to the Committee on Government Operations.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. ROBERT C. BYRD):

A joint resolution of the Legislature of the State of California. Referred to the Committee on Public Works:

"ASSEMBLY JOINT RESOLUTION No. 7

"Relative to the New Melones Dam project

"Whereas, the United States Army Corps of Engineers is planning the construction of the New Melones Dam on the Stanislaus River in the State of California; and

"Whereas, the New Melones Dam Project, which is proposed to have a capacity of 2,400,000 acre feet, is urgently needed to provide flood protection for the Stanislaus River Basin; and

"Whereas, the additional water supply which will be made available by the project for agricultural and municipal purposes will greatly benefit the people of California; and

"Whereas, the project will provide outstanding recreational opportunities for the large urban populations of northern and central California; and

"Whereas, the Board of Supervisors of Stanislaus County, as well as numerous other local agencies, strongly support the construction of the New Melones Dam Project at the earliest possible time; 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 proceed with the construction of the New Melones Dam Project on the Stanislaus River in the State of California as quickly as possible upon such construction being permitted under pending litigation; 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, to the Chief of the United States Army Corps of Engineers, and to each Senator and Representative from California in the Congress of the United States."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIBLE, from the Committee on Appropriations, with amendments:

H.R. 8947. An act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1974, and for other purposes (Rept. No. 93-338).

By Mr. CANNON, from the Committee on Rules and Administration, with amendments:

S. 1803. A bill to authorize the waiver of claims of the United States arising out of erroneous payments of pay and allowances to employees of the Government Printing Office (Rept. No. 93-339).

EXECUTIVE REPORTS OF A COMMITTEE

Mr. NUNN. Mr. President, as in executive session, from the Committee on Armed Services, I report sundry nominations in the Army, Navy, U.S. Army Reserve, Naval Reserve Training Corps, Army of the United States, Reserve of the Army of the United States, Naval Reserve, and Marine Corps.

The PRESIDING OFFICER. The reports will be received, and the nominations will be placed on the executive calendar.

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. ALLEN (for himself and Mr. SPARKMAN):

S. 2216. A bill to amend the Wild and Scenic Rivers Act by designating the West Fork of the Sipsey Fork in the State of Alabama for potential addition to the National Wild and Scenic Rivers System. Referred to the Committee on Interior and Insular Affairs.

By Mr. BAKER:

S. 2217. A bill to provide for improvement in the treatment of animals in air transportation. Referred to the Committee on Commerce.

By Mr. HATHAWAY (by request):

S. 2218. A bill to establish the United States of America as an Oceanus Congressional Nation. Referred to the Committee on Foreign Relations.

By Mr. SCHWEIKER:

S. 2219. A bill to provide that the Secretary of Transportation and the Interstate Commerce Commission require common carriers under their jurisdiction to require that smoking aboard aircraft, railroad cars, buses, and vessels carrying passengers, shall be limited to and permitted only in areas that shall be designated for that purpose. Referred to the Committee on Commerce.

By Mr. BAKER (for himself and Mr. BROCK):

S.J. Res. 136. Joint resolution providing for the designation of the first week of October of each year as "National Gospel Music Week." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAKER:

S. 2217. A bill to provide for improvement in the treatment of animals in air transportation. Referred to the Committee on Commerce.

Mr. BAKER. Mr. President, I introduce today a bill to provide for a study of existing conditions for the handling of animals in air transportation, and for the establishment of Federal regulations and minimum standards in order to insure the humane treatment of those animals.

Each year, America's commercial airlines carry a very large number of animals shipped commercially via air freight and destined for pet shops, zoos, and research laboratories. In addition, thousands of pets are carried in the cargo compartments of airplanes, traveling with their owners as excess baggage. It is becoming increasingly clear, in my opinion, that existing airline regulations governing such shipments are inadequate to protect these animals.

A growing body of evidence compiled by such groups as Consumers Union and the Humane Society of the United States indicates that the conditions under which animals travel by air are unsafe, and, indeed, many animals are injured and even killed as a result of improper and careless handling, inadequate air supply and temperature control in cargo compartments, and a lack of proper crates, kennels, and cages.

Animals are often accepted for shipment in unsturdy containers, which are unable to withstand rough treatment by baggage handlers. Although cargo compartments or aircraft are pressurized, as a result of fire-prevention measures, there is virtually no air circulation in

these compartments after they have been sealed. Animals stored within them, therefore, must exist for their entire journey on the amount of air present at loading. If bulky containers are placed on top of or next to those containing animals, air supply is restricted even more. Temperatures in those compartments can vary, according to an article in the March 1973 issue of Consumer Reports, from 0° F. to 104° F.

During loading and unloading, animals are treated in the same manner as other cargo and baggage—sometimes sitting out of doors in heavy rain, snow, or bitter cold. If flights are canceled or delayed because of weather conditions, commercial shipments of animals are often stored unattended in warehouses for hours and days at a time.

Although the Animal Welfare Act has gone a long way toward insuring that animals moving in interstate commerce will be treated humanely, common carriers are specifically exempted from the provisions of that act. While individual airlines have established regulations and guidelines for their own employees to follow in handling animal shipments, these regulations often seem to be overlooked or simply ignored. All airlines limit the liability which they will accept for shipments of animals or carriage of pets, and some refuse to accept any liability whatsoever. The result, Mr. President, is that there is simply no incentive for airlines or individual employees to exercise careful control over the handling of animals, and there are no Federal regulations requiring them to do so.

To aggravate the situation described above, it is evident that the airlines have failed to inform the public fully of the risks involved in shipping pets by air. Some airlines have deliberately misled their customers by making false claims as to the conditions under which their pets will travel. One airline, for example, has instructed its flight attendants to tell customers that their pets will travel in cargo compartments where the "normal temperature is 50° to 70°," when, in fact, temperatures may reach much higher or lower levels. Another airline indicated that pets travel in "air-conditioned aircraft" when, in fact, no airline has air-conditioned baggage compartments.

Although it is my understanding that the Civil Aeronautics Board has plans to research the problems of transporting animals by air, there has evidently been no thorough study made as of this time of airline procedures for shipping animals or of the effectiveness of airline regulations. The bill which I am introducing today would require the Secretary of Transportation, in consultation with the Civil Aeronautics Board, to make a study of all aspects of the handling and treatment of animals in air transportation. The study would encompass procedures for handling animals from the point at which a shipper transfers custody of the animal for shipment by air until the animal is delivered to the consignee at the agreed destination. At the end of 60 days, the Secretary will be required to submit the results of his study to the Congress. Within 60 days after that, he will be required to promulgate regulations, including minimum standards, for the humane treatment of animals in air transportation.

I would hope that these regulations would include the establishment of minimum standards for carrying cases, cages and kennels which are constructed so as to provide protection for animals during loading, unloading and flight. In addition, I would hope that the Secretary would establish regulations governing handling of animals by airline employees, and that consideration can be given to the feasibility from an economic standpoint of requiring airlines to provide some form of temperature control in compartments in which animals are stored aboard aircraft.

Mr. President, in offering this proposal, it is not my intention to imply that air carriers either abuse or mistreat all animals with which they are entrusted; in fact, the incidence of death is relatively low for some carriers. However, just as we refuse to attribute monetary value to human safety, so must we recognize the priceless importance of pets in the lives of millions of Americans and so must we recognize our responsibility to take the necessary steps to insure the humane treatment of animals traveling by air.

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

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

S. 2217

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Transportation, in consultation with the Civil Aeronautics Board, shall undertake a study of existing conditions in the treatment of animals in air transportation. Such study shall include examination of the treatment of animals from the point at which the shipper transfers custody of the animal for shipment by air until the animal is delivered to the consignee at the agreed destination.

(b) The Secretary shall report to the Congress on the results of such study, including his recommendations, not later than sixty days after the date of enactment of this Act.

SEC. 2. (a) Title XI of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new section as follows:

"HUMANE TREATMENT OF ANIMALS IN AIR TRANSPORTATION

"SEC. 1113. The Secretary shall prescribe, not later than 120 days after the date of enactment of this section, regulations, including minimum standards, providing for the humane treatment of animals in air transportation."

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE XI—MISCELLANEOUS" is amended by inserting at the end thereof the following:

"Sec. 113. Humane Treatment of Animals in Air Transportation."

By Mr. SCHWEIKER:

S. 2219. A bill to provide that the Secretary of Transportation and the Interstate Commerce Commission require common carriers under their jurisdiction to require that smoking aboard aircraft, railroad cars, buses, and vessels carrying passengers, shall be limited to and permitted only in areas that shall be designated for that purpose. Referred to the Committee on Commerce.

Mr. SCHWEIKER. Mr. President, I introduce a bill to provide that the Secretary of Transportation and the Interstate Commerce Commission require common carriers under their jurisdiction to require that smoking aboard aircraft, railroad cars, buses, and vessels carrying passengers shall be limited to and permitted only in areas that shall be designated for that purpose.

The purpose of this legislation, which I also introduced in the last Congress, is to require that all mass transit facilities which carry passengers provide a designated area for the seating of passengers who wish to smoke. This bill would require that special smoking areas be set aside. The Department of Transportation and the Interstate Commerce Commission would be responsible for setting regulations under this legislation.

Several common carriers have already taken steps in this direction. The CAB has adopted a regulation requiring all airlines to separate smokers and nonsmokers beginning July 10, 1973. The Interstate Commerce Commission decreed April 17, 1972, that all interstate buses separate smokers and nonsmokers. However, the National Association of Motor Bus Owners has appealed this proposal, so it is not presently in effect. I commend the efforts of the CAB and the ICC and believe this should be required in all mass transportation facilities.

The latest report on smoking and health by the U.S. Surgeon General found that tobacco fumes may be dangerous to nonsmokers who inhale them. The Surgeon General's report indicated that nonsmokers in enclosed areas absorb a significant amount of the components of cigarette smoke. The report also indicated that exposure to cigarette smoke can result in the impairment of time interval discrimination, visual discrimination, and certain physiological stresses on persons with heart disease. As most nonsmokers know, and the report points out, smoking often causes nasal irritation to nonsmokers. In fact, the report indicated that nonsmokers experience more nasal irritation than ocular or visual irritation as compared with smokers exposed to similar amounts of smoke in the atmosphere.

A report published in 1970 by the Inter-Society Commission for Heart Disease Resources recommended a prohibition against smoking in large meetings and mass transit facilities.

Another aspect of this problem beyond the relationship of smoking and health which ought to be considered is the problem of fire prevention.

Mr. President, I believe there is a substantial evidence of both the medical desirability and the desire of passengers in mass transportation facilities to separate smokers from nonsmokers. The Surgeon General's report has added a new dimension to this problem by pointing out the significant impact tobacco fumes can have no nonsmokers. Thus,

the problem goes beyond the personal desires of smokers, and it is time for us to act to protect the rights of those who do not smoke to breathe clean air.

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

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

S. 2219

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Public Transportation Smoking Section Act".

SEC. 2. The Secretary of Transportation shall prescribe such reasonable rules and regulations as may be necessary to require that each air carrier under the jurisdiction of the Civil Aeronautics Board shall require that smoking aboard every aircraft operated by it in the carriage of passengers of interstate, overseas, or foreign air transportation, shall be limited to and permitted only in areas that shall be designated for that purpose.

SEC. 3. The Interstate Commerce Commission shall prescribe such reasonable rules and regulations as may be necessary to require each common carrier by railroad, each common carrier by motor vehicle, and each common carrier by water under the jurisdiction of the Commission to require that smoking aboard every railroad car, motor vehicle, or vessel, as the case may be, operated by any such common carrier in the carriage of passengers in interstate commerce, shall be limited to and permitted only in areas that shall be designated for that purpose.

ADDITIONAL COSPONSORS OF BILLS

S. 384

At the request of Mr. COOK, the Senator from South Dakota (Mr. ABOUREZK) was added as a cosponsor of S. 384, to assist the States in raising revenues by making more uniform the incidence and rate of taxes imposed by States on the severance of coal.

S. 1605

At the request of Mr. BROCK, the Senator from Colorado (Mr. DOMINICK) was added as a cosponsor of S. 1605, a bill to amend the Truth in Lending Act to prohibit discrimination on account of sex or marital status against individuals seeking credit.

S. 1772

(At the request of Mr. ALLEN, his name was added as a cosponsor of S. 1772, the Black Lung Benefits Act.

S. 2081

At the request of Mr. NUNN, the Senator from Utah (Mr. BENNETT), the Senator from Nevada (Mr. CANNON), and the Senator from Arkansas (Mr. MCCLELLAN) were added as cosponsors of S. 2081, to amend title IV of the Social Security Act to provide a method of enforcing the support obligations of parents of children who are receiving assistance under such title, and for other purposes.

SENATE CONCURRENT RESOLUTION 41—SUBMISSION OF A CONCURRENT RESOLUTION—ESTABLISHMENT OF POLICY IN VIETNAM

(Referred to the Committee on Foreign Relations.)

Mr. TOWER submitted a concurrent resolution (S. Con. Res. 41), which reads as follows:

S. CON. RES. 41

Whereas the Government of the Democratic Republic of North Vietnam and the Provisional Revolutionary Government (Viet Cong) have failed to live up to Article 8, paragraph (b) and the protocol in Article 10 of the January 27, 1973, agreements and the explanatory statement on the same article contained in the June 13, 1973, agreements, all of which relate to facilitating the location and care of graves of the dead, exhumation and repatriation of the remains as well as to obtain information on those still considered missing-in-action;

Whereas the Congress of the United has declared that the United States will cease all military activity in South Vietnam, Cambodia and Laos by August 15;

Whereas the Lao Patriotic Front (Pathet Lao) has also failed to cooperate in this effort: Now therefore be it

Resolved by the Senate (the House of Representatives concurring), that it is the sense of the Congress that it shall be the policy of the United States that the Government of the United States shall cease forthwith all consideration of aid, trade, diplomatic recognition or any other form of communication, travel or accommodation with the Democratic Republic of North Vietnam or the Provisional Revolutionary Government (Viet Cong) until such time as the aforesaid agreements are complied with to the fullest extent.

SENATE RESOLUTION 149—SUBMISSION OF A RESOLUTION RELATING TO DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND SWEDEN

(Referred to the Committee on Foreign Relations.)

Mr. HUMPHREY submitted a resolution (S. Res. 149), which reads as follows:

S. RES. 149

Whereas a close and friendly relationship has normally existed between Sweden and the United States over the years, virtually since the foundation of this Republic, and

Whereas this relationship has needlessly been disrupted over a period of almost a year, as evidenced by the absence of a United States Ambassador in Stockholm since August of 1972, and the tacit refusal of the United States Government to receive an Ambassador from Sweden since January of this year, and

Whereas the Senate has affirmed the position that diplomatic relations do not depend upon or connote approval of the views of the governments concerned: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States Government and Sweden should restore their normal friendly relations, and confirm this return to normalcy by appointing and dispatching ambassadors to their respective capitals on an immediate basis.

(Discussion of the resolution appears in the debate relating to the War Powers Act.)

AMENDMENT OF TRUTH IN LENDING ACT—AMENDMENT

AMENDMENT NO. 388

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

CLOSING COST AMENDMENT

Mr. PROXMIRE. Mr. President, I submit an amendment to limit closing costs on real estate transactions. The amendment is identical to a provision in the 1972 housing bill which was passed by the Senate on March 2, 1972. Congress took action last year to control escalating closing costs following an exhaustive study by the Department of Housing and Urban Development which showed that closing costs were unreasonably high on real estate transactions. Unfortunately, no final action was taken on the 1972 housing bill and the entire subject died in the 92d Congress.

I believe it is necessary to take prompt action on the closing cost problem at this time. The Senate Banking Committee has just begun hearings on a 1973 housing bill; however it may take several months for this legislation to reach the floor and several more months to pass the entire Congress. In fact, considering the amount of controversy surrounding our housing programs, there is a good chance there may be no housing bill at all in the 93d Congress. Therefore, we must look to another bill to deal with the problem of closing costs if we want to provide some near term relief for the hard pressed home buyer.

The Truth in Lending Act amendments already deal with the subject of closing costs. Section 209 of the legislation strengthens the requirements for disclosing closing costs on real estate transactions. I therefore believe it is appropriate to go one step beyond disclosure and to consider an amendment to regulate closing costs. If we do not act at this time on this bill, it is likely that any meaningful reform will be delayed several months or even years. Every day we delay will cost consumers at least a million dollars.

Mr. President, Congress took action nearly 3 years ago to limit excessive closing costs on FHA–VA mortgage transactions. Section 701 of the Emergency Home Finance Act of 1970 authorizes and directs the Secretary of HUD and the Administrator of the VA to—

Prescribe standards governing the amount of settlement costs allowable in connection with the financing of such housing in any such area.

Such housing refers to housing assisted by the FHA or the VA. The cost standards established by HUD and the VA are to be based on their estimates of the reasonable charge for necessary services involved in real estate settlements. Thus, HUD and VA have the authority to prohibit unreasonable charges or charges for unnecessary services.

It should be noted that HUD and the VA are directed to issue regulations to limit settlement charges. The authority is mandatory and not discretionary.

Despite the firm stand taken by Congress in 1970 against excessive closing costs, HUD and the VA have been dragging their feet. They have produced an excellent report which fully documents the excessive closing costs being charged. But so far, they have not issued regulations to control these excessive charges. Regulations were proposed last July to limit closing costs in several metropolitan areas, but they have apparently been shelved in response to intensive pres-

sure from real estate lawyers, title insurance companies and others who benefit from high closing costs.

Mr. President, my amendment would do four things:

First, it consolidates the existing authority to control settlement charges which is presently divided between HUD and the VA. My amendment gives the authority to HUD which must act in consultation with the VA;

Second, my amendment expands the scope of the existing law to cover certain conventional mortgage loans purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

Third, my amendment requires that regulations limiting closing costs be issued within 6 months;

Fourth, my amendment prohibits kickbacks on real estate transactions. This antikickback provision would cover situations where a builder might refer settlement business to a lawyer in return for a fee or other benefit, or where a lender might refer title insurance business to a title insurance company under similar arrangements. These, of course, are not the only type of kickback arrangements prohibited by my amendment.

Mr. President, the need to control closing costs were clearly documented in the HUD–VA report on settlement costs issued on February 17, 1972.

Secretary of HUD George Romney testified before the Housing Subcommittee on this report on March 1 of last year. In his statement to the committee, Secretary Romney acknowledged that—

Serious abuses have arisen in this field, and that—these abuses—have resulted in adding significantly to the cost of acquiring a home.

In later testimony he estimated home buyers were paying hundreds of millions of dollars a year in excessive closing charges.

In reviewing the findings of the HUD–VA study, Secretary Romney also presented these conclusions to the subcommittee:

1. High settlement costs as well as other problems of settlement stem in no small part from basic inefficiencies in the existing system of conveying, recording, and assuring validity of title to parcels of real estate.

2. Settlement costs and practices vary widely even within the same geographic area.

3. Costs are unreasonably high in many areas, but not in all.

4. Whenever many specialists become involved in the conveyancing process and services are fragmented among them, costs are significantly higher.

5. State regulation of title insurance and other title related costs are largely ineffective.

6. In most cases, competition in the conveying industry is directed toward other participants in the industry and not toward the home buying public.

Lenders compete to get business from real estate brokers or escrow companies.

Title companies compete to get business from attorneys, brokers, and lenders.

Frequently this competition takes the form of an elaborate system of referral fees, kickbacks, or commissions as inducements to firms and individuals who direct the placement of business.

No one appears much interested in competing by putting costs to the homebuyer since he is not likely to be in the market for another home in the near future, and will ordinarily accept the services (and charges) of whomever he is referred to.

7. Charges for services relating to settlement often are not based on factors related to the cost of providing the services.

Frequently they are based on the sales price of the property.

We found that the overall level of charges tends to be lower when the charge for a service is not directly related to the sales price of the property.

8. The minimum or recommended fee schedules of local bar associations and local real estate groups often do not reflect the actual work done. The use of such schedules to determine fees tends to increase settlement costs.

9. Most public systems of keeping land records need to be improved in order to facilitate title search. If title search were simplified, this would tend to reduce title-related and other settlement costs.

10. It is evident from these findings that serious problems exist in the conveyancing industry and that such problems demand immediate attention in order to assure that the public is not charged more for settlement costs than is reasonable.

Mr. President, the wide variance in closing charges was clearly demonstrated in the HUD–VA study. As Secretary Romney testified, these variances could not be explained solely on the basis of variances in the cost of doing business. To put the matter more bluntly, in many areas the public is being gouged.

For example, the HUD–VA study showed that closing costs on home prices between $20,000 and $24,000 varied across the country from a low of $50 to a high of nearly $2,000. This is a price variance of 40 to 1 for essentially the same service.

The average amount of total closing costs also varied widely between States For example, in Maryland average closing costs came to $1,060 whereas in South Dakota these same charges averaged only $303.

There was also considerable variance between metropolitan areas. Closing costs in the Newark, N.J. area on a $20,000 to $24,000 FHA home averaged $834, whereas closing costs for similar housing averaged only $369 in the Minneapolis area.

There is also considerable variance within the same metropolitan areas. In Los Angeles County, closing costs ranged from a low of $200 to a high of $1,000 for homes in the $20,000 to $24,000 range.

In Chicago, they ranged from a low of $102 to a high of $723 for the same priced housing.

Mr. President, there may be some legitimate reason for explaining some of these differences. Recordkeeping procedures vary from State to State and from community to community. But even when these cost differences are taken into account, the HUD study still found widespread variances. As Assistant Secretary Gulledge put it during the hearings, in some areas it is almost a matter of charging what the traffic will bear.

The average home buyer has virtually no bargaining power to protect himself against excessive closing charges. For most people, the entire settlement process is a deep mystery. The average person only buys a home once or twice in his lifetime. When he shells out $30,000 or $40,000 for a home, he tends to disregard the additional fees and expenses which each participant in the settlement process has been able to extract. The home buyer is a virtual captive in the hands of the lender, the attorney, the real estate broker and others. We must therefore act to protect the home buyer from being ovecharged on home closing costs.

Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD at the end of my remarks.

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

AMENDMENT NO. 388

Add the following new title at the end thereof.

TITLE IV—CLOSING COSTS

§ 401. CLOSING COSTS.

(a) Section 701 of the Emergency Home Finance Act of 1970 is amended to read as follows:

"ALLOWABLE CLOSING COSTS IN THE FINANCING OF CERTAIN HOUSING; PROHIBITION OF CERTAIN FEES

"SEC. 701. (a) The Secretary of Housing and Urban Development shall, after consultation with the Administrator of Veterans' Affairs, publish standards governing the amounts of closing costs allowable to be paid by buyers and sellers in connection with the financing of housing designed principally for the occupancy of from one to four families and—

"(1) which is built, rehabilitated, or purchased with assistance provided under the Revised National Housing Act, the National Housing Act, or chapter 37 of title 38, United States Code; or

"(2) which is covered by a mortgage purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

"(b) Unless the closing costs charged in connection with the financing of such housing are allowable under standards published under subsection (a) of this section at the time of such financing—

"(1) no mortgage covering such housing shall be insured or guaranteed under any such Act or chapter unless the Secretary or the Administrator, as the case may be, determines that any excess or non-allowable charge has been repaid; and

"(2) no mortgage covering such housing shall be purchased by such Association or Corporation.

"(c) Standards published under subsection (a) of this section shall—

"(1) be consistent in any area for housing described in subsection (a) of this section; and

"(2) be based on the Secretary's estimates of the reasonable charges for necessary services involved in closings for particular classes of mortgages and loans.

"(d) The Secretary shall from time to time make such recommendations to the Congress as he deems appropriate for legislation to reduce closing costs and to standardize such costs for all geographic areas.

"(e) Any person who accepts or furnishes any thing of value pursuant to any agreement, oral or otherwise, that business incident to or a part of any real estate settlement shall be referred to any person shall be fined not more than $10,000 or imprisoned for not more than one year, or both, except that this

subsection shall apply only in the case of a real estate settlement in connection with housing referred to in subsection (a)."

(b) The standards referred to in the amendment made by subsection (a) of this section shall be published not later than one hundred and eighty days after the date of enactment of this title.

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1973—AMENDMENTS

AMENDMENT NO. 389

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

Mr. PROXMIRE. Mr. President I send to the desk an amendment to S. 372, the Federal Election Campaign Act Amendments of 1973. This proposal would limit individual contributions to any one candidate for Federal office, including the office of the President, to $100 and would limit the contributions of an individual, together with the members of his family, to all candidates to $1,000.

I intend to call up this amendment for a vote on Monday, July 23.

AMENDMENTS NOS. 390 THROUGH 398

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

Mr. BROCK. Mr. President, I am delighted that the Senate has responded to our call for the speedy consideration of legislation to bring about a thorough and comprehensive reform of our campaign practices laws.

In this regard also, I would like to commend the Rules Committee of the Senate for their diligent work, which has resulted in the reporting out of S. 372, the Federal Election Campaign Act Amendments of 1973.

That legislation incorporates many of the important features which I have urged, and which are contained in my own bill, S. 2159. Specifically, it calls for the creation of a Federal Elections Office, a single repository system for campaign receipts, and the banning of campaign contributions in cash which exceed $100.

Other important areas remain however, and it is my intention to present a series of amendments to S. 372 which will have the effect of making the law tougher with regard to its reporting provisions, fairer with regard to its application to incumbents and challengers alike, and more beneficial to the public with regard to maximizing their ability to reach their personal conclusions as to how they should vote.

The amendments which I submit are these:

First. The newly created Federal Elections Commission shall publish, for all voters, an informational pamphlet, presenting the views of each candidate for Federal office in the voter's State.

Incumbents should be prohibited from using their franking privilege for mass mailings within 60 days of an election in which they are a candidate.

Third. In addition to other requirements, campaigns would be required to obtain and report the social security number of all persons making contributions which must be reported under the current provisions of S. 372.

Fourth. Campaign advertising would be prohibited except in the last 35 days before the election.

Fifth. Provisions would be established for the reporting of anonymous contributions, and for the exposing of earmarked contributions made to multicandidate committees.

Sixth. The present income tax incentives for political contributions would be doubled, adding an additional incentive for small-donor participation in the electoral process.

Seventh. Candidates would be prohibited from financing their own campaigns, thereby eliminating an advantage enjoyed by wealthy persons.

Eighth. Toughened reporting procedures would be created, providing for the weekly reporting of contributions during the last 60 days of a campaign, and of expenditures during the last 30 days. Quarterly reporting would remain for the earlier period of the campaign.

Ninth. The freedom of choice of individuals would be protected with regard to certain noncandidate organizations who may support candidates, thus assuring that such organizations obtain the agreement of the ultimate donor that his contribution may be used in the support of a particular candidate.

There is great cynicism about the electoral process in these times, and much of it is justified. In seeking reform, we must be sure that our efforts are tough, fair, and honest, and that they genuinely redress the grievances suffered under the current system.

We must be sure that they do not give advantage to one candidate, or class of candidates, over another, or to one party over another.

I believe that my amendments strengthen S. 372 in that regard, and I am hopeful that they will be so viewed by this body.

AMENDMENT NO. 399

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

Mr. HUMPHREY submitted amendments, intended to be proposed by him, to Senate bill 372, supra.

AMENDMENT NO. 400

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

Mr. CRANSTON submitted an amendment, intended to be proposed by him, to Senate bill 372, supra.

AMENDMENT NO. 402

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

Mr. EAGLETON. Mr. President, I submit an amendment, intended to be proposed by me, to the bill (S. 372) to amend the Federal Election Campaign Act of 1971.

My amendment lowers the limitations on campaign expenditures below those in the bill reported from the committee. Whereas the committee bill would restrict spending to 15 cents multiplied by the voting age population in the primary, and 20 cents in the general election, my amendment would lower these ceilings to 10 cents in the primary and 15 cents in the general election. The amendment would not alter the floors established in the bill.

I ask unanimous consent that my amendment be printed at this point in the RECORD.

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

AMENDMENT NO. 402

On page 51, line 4 strike "15 cents" and insert in lieu thereof "10 cents".

On page 51, line 21, strike "20 cents" and insert in lieu thereof "15 cents".

AMENDMENTS NOS. 403 AND 404

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

Mr. TUNNEY. Mr. President, if our democracy is to survive, elections must be free and open, and forceful action must be taken against those candidates and their underlings who would sabotage the process.

I am submitting today two amendments to S. 372, the Federal Election Campaign Act Amendments of 1973, which I believe will significantly strengthen our campaign finance laws, and establish a lasting deterrent to future Watergates.

CIVIL DAMAGES AVAILABLE TO DEFEATED CANDIDATES

My first amendment to S. 372 will add a new section 316 to the Federal Election Campaign Act of 1971 to allow a defeated candidate to sue an opponent or any person or committee acting as his agent if any of them has committed substantial violations of the campaign laws which may have affected the outcome of the election.

Under current law, it is virtually impossible for a defeated candidate to win a civil suit against his opponent even though the opponent may have committed serious violations of the campaign laws. This unfair result is caused by the fact that actual damages suffered by virtue of the opponent's practices are hard to prove; courts insist that the defeated candidate show that "but for" the violation of law, the candidate would have won the election. If he cannot show that his defeat was caused by the opponent's practices, then the court will not determine that he is actually damaged. Courts generally refuse to award punitive damages in the absence of actual damages.

My amendment would allow the defeated candidate to collect punitive damages in such a case even though he might not collect actual damages. All he need prove is that a serious violation of the campaign laws took place and that there is the possibility that such violation affected the outcome of the election.

I believe this amendment would serve as a deterrent to those who have felt they could commit destructive acts of political sabotage with virtual impunity insofar as damages are concerned.

The 1972 campaign, as the Senate Select Committee is revealing, was replete with such episodes. False letters imputing ethnic prejudices to candidates, alleging sexual and other improprieties by candidates that had no basis in fact, and damaging "dirty tricks" distorted the political landscape from Florida, to California, to Maine.

If the victims of these vicious smears

could establish the reasonable possibility that they lost their election because of actions like these, they could collect both actual and punitive damages under my amendment.

My amendment would safeguard against frivolous suits. It provides that the Federal Campaign Election Commission established by S. 372 would act as a screening agency for suits brought by defeated candidates. The Commission must find "probable cause" to believe that a substantial violation of the laws within its jurisdiction occurred, and that such violation may have affected the outcome of the election. Only after such a determination is made can a defeated candidate bring an action for damages in Federal district court under section 316.

PROHIBITION OF USE OF CAMPAIGN FUNDS FOR CRIMINAL DEFENSE

My second amendment to S. 372 would add a new section 617 to the Corrupt Practices Act to make it illegal to use campaign funds to pay for any criminal defense. Authority for enforcing the provision would be placed in the Federal Election Campaign Commission.

Under current law there is a possible ambiguity as to whether or not the use of campaign funds for criminal defense purposes is legal. Certain tax code regulations and the Campaign Reform Act of 1971 bear on the situation but the Corrupt Practices Act, the law containing the important criminal provision relating to campaign financing, fails to deal with it. By placing a new section in the Corrupt Practices Act we will clearly inform all campaign treasurers that such a use of campaign funds is illegal and will be subject to fines up to $25,000 and imprisonment up to 5 years. The Elections Commission is given authority to enforce my amendment because it has primary responsibility for reviewing campaign finance records and therefore most easily can spot a violation.

In recent weeks we have seen newspaper reports that the Committee to Reelect the President spent over $80,000 in legal fees in the last quarter alone. Much of this money was spent to defend persons charged with criminal offenses. All this has been done without the consent of those who donated their money to elect a candidate for President.

This is not in any way a partisan issue. According to reports, many Republican Party leaders have spoken out against this use of campaign funds—a practice which may not be unique to this administration or the Republican Party.

It is to insure that this situation will no longer continue that I have introduced this amendment. It clearly states that to use money donated to a campaign for defense costs in a criminal case is illegal. It will not prevent people from donating to special defense funds if they wish to, but those funds will have to be separated from campaign funds.

CRISIS OF CONFIDENCE

We approach the elections of 1974 in the midst of a crisis of confidence resulting from the abuses of some candidates in the election of 1972. We must act now to heal the wounds inflicted upon the body politic by those abuses.

This is the year in which we must take action to close the loopholes in the laws governing the electoral process that have allowed these abuses to occur. In addition, we must be sure that the processes available for enforcement of these laws are effective. We must do this to insure the confidence of our people in their governments, a confidence which has been badly shaken by the revelations in the wake of the Watergate scandals.

IMPROVEMENT OF PENSION AND WELFARE BENEFIT PLANS—AMENDMENTS

AMENDMENT NO 401

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

Mr. STEVENSON submitted amendments, intended to be proposed by him, to the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

NOTICE OF HEARINGS ON EMERGENCY POWER

Mr. CHURCH. Mr. President, I would like to announce to my colleagues and the public that on Tuesday, July 24, at 10 a.m. in room 4221 of the Dirksen Office Building, the Special Committee on the Termination of the National Emergency will hold its second phase of hearings on emergency powers statutes. The witnesses will be former Attorneys General Justice Tom C. Clark, Mr. Nicholas Katzenbach, and Mr. Ramsey Clark. They will testify on the question of delegated emergency powers.

NOTICE OF HEARINGS ON FUTURE DIRECTIONS IN SOCIAL SECURITY

Mr. CHURCH. Mr. President, the Senate Special Committee on Aging will continue its hearings on "Future Directions in Social Security" with testimony beginning each day at 10 a.m. on July 25 in room 4232, Dirksen Office Building and July 26 in room 1114, Dirksen Office Building. Witnesses will include former Health, Education, and Welfare Secretary, Wilbur Cohen, and representatives of the National Retired Teachers Association-AARP.

ADDITIONAL STATEMENTS

NAVY WASTES OVER A MILLION DOLLARS ON "EFFICIENCY" STUDY

Mr. PROXMIRE. Mr. President, the Navy has paid over a million dollars to a private consultant for an "efficiency" study that should have been used in negotiations for a billion dollar weapon. But the Navy failed to coordinate the study with its own contract negotiator or with other Pentagon officials and the consultant's final report was obtained too late to be used in the negotiations.

The Navy hired a private consultant, A. T. Kearney & Company, to study ways to reduce costs in the Mk 48 torpedo program. The consultant found that direct labor costs in the Mk 48 contractor's plant, Gould, Inc., could be reduced by 19 percent and that overhead costs could be reduced by 23 percent through more efficient management.

STUDY NOT COORDINATED

Unfortunately, the Navy did not properly coordinate the study with other Pentagon officials and the final report of the study was not obtained until after negotiations were nearly completed. The Navy obtained no benefits from its million-dollar study during the negotiations of the contract price.

GAO CRITICISES NAVY

You might say the Navy torpedoed its own study.

I asked the General Accounting Office to assess the Navy's study. GAO concluded that it had "reservations" about the prudence of the Navy's decision to invest over $1 million in the studies without taking the steps necessary to insure that the results would be used in price negotiations.

For years I have been urging the Pentagon to employ should-cost studies, which are based on industrial engineering and financial management principles, to identify ways to reduce waste in military procurement.

Now the Navy, after paying the expense of doing a should-cost study of one of its largest weapon programs, has demonstrated how to waste money while seeking ways to eliminate waste.

COST OVERRUN ON MARK 48 TORPEDO

The Navy awarded the first Mark 48 torpedo development contract in 1964. Over the next several years the program ran up one of the largest cost overruns on record.

In 1964 the total program estimate for the Mark 48 was $642 million. By 1969 the estimate had ballooned to a whopping $3.8 billion.

The cost estimate of the program has since gone down substantially but the reduction was achieved primarily by reducing the number of torpedoes to be purchased.

As of December 1972 the costs were estimated at $1.5 billion, more than twice as much as the original estimate for far less torpedoes.

In 1970 a private consultant, A. T. Kearney & Co., was hired by the Navy to do a series of should-cost studies to determine whether Mark 48 production costs could be cut by improving the operation of the contractor's operations. A total of $1,380,000 was spent for the studies.

What happened subsequently can only be described as a Navy comedy of errors.

SHOULD-COST STUDY DESIGNED TO AID IN NEGOTIATIONS

The primary purpose of a should-cost study is to aid the Government in negotiations with the contractor before a contract is awarded. For example, if known inefficiencies are identified in a contractor's plant, the Government is in a position to insist on a lower price than the one proposed, on the assumption that the contractor can improve his efficiency and reduce his costs.

The Navy began its negotiations of the

first Mark 48 production contract in May 1971 and completed them in June 1971.

It was not until shortly before negotiations were to begin that the Navy negotiator was given copies of the preliminary results of the should-cost studies.

NAVY NEGOTIATOR SAYS COMPANY KNOWS MORE ABOUT STUDY THAN NAVY

However, the Navy negotiator concluded that he could not use the preliminary results in the negotiations because, among other reasons, there had been no early coordination between the consultant and him, and because the contractor, Gould Inc., knew more about the should-cost study findings than the Navy.

Meanwhile, the Navy had asked the Defense Contract Audit Agency—DCAA—and the Defense Contract Administration Services—DCAS—to evaluate the contractor's proposed prices prior to the award of the contract.

But the should-cost study had not been coordinated with DCAA or DCAS. DCAS did not obtain a copy of the study report until months after it was completed, and then only after requesting one. Over a year after the study was completed the DCAA auditor in charge had still not seen the report.

Had the Navy been able to use the results of the study during the negotiations with Gould, Inc., the contract price could have been reduced by millions of dollars.

NAVY FAILS TO MONITOR CONTRACTOR

The should-cost study recommended several improvements in the contractor's operations but even now the Navy has not entered into a formal agreement with the contractor to implement the improvements and has neither requested nor required that action taken on the recommendations be reported to the Navy.

The Navy has not asked DCAA or DCAS to monitor the contractor's actions to implement the improvements.

The Navy failed to coordinate its consultant's study with other efforts to evaluate the contractor's price proposals, failed to use the should-cost study in the negotiations, failed to inform other Pentagon officials of the study's recommendations for eliminating inefficiency in the contractor's plant or of the corrective actions the contractor agreed to take, and failed to monitor and report on the contractor's progress in making the improvements.

If the Navy brass has consciously planned to sabotage its own should-cost study, they could not have done a better job. Somebody up there likes fat.

BENEFITS CLAIMED STUDY CHALLENGED BY GAO

The Navy maintains that the should-cost studies of the Mark 48 were "cost effective" and fulfilled their purpose by aiding the Navy in the selection of Gould as the winning contractor and identifying ways for the contractor to improve his efficiency.

GAO points out, however, that the Navy claims are largely intangible and cannot be measured precisely.

One way to test the Navy's assertion would be to compare unit cost estimates for the Mark 48 prior to the award of the contract with actual unit costs now that a number of torpedoes have been delivered.

NAVY WITHHOLDS UNIT COST ESTIMATES

The Navy has so far withheld unit cost estimates on the ground that such information is classified. It is always suspicious when the Pentagon conceals cost information because only in rare circumstances can the publication of costs be considered harmful to national security.

I am, therefore, requesting that the Comptroller General analyze the unit costs of the Mark 48 to determine whether the Government is paying more or less per torpedo since the first production contract was awarded than was originally estimated and to see whether the recommendations in the should-cost study have been implemented.

MINIMUM WAGE

Mr. DOMENICI. Mr. President, yesterday I faced a dilemma when it came time to vote on S. 1861, a bill to amend the Fair Labor Standards Act. There were many provisions of the bill I wholeheartedly endorsed, including the increase in minimum wages. However, at the same time I felt other clauses in the bill would be detrimental to a large segment of our society.

Specifically, I was concerned that if this bill were passed, students would have a difficult time finding work—as would other young people under 18 years of age. As I have stated earlier this week, I fear that unless a youth differential clause was adopted the already hopeless youth unemployment rate would become even worse. Employers simply will hire more mature, seasoned workers instead of taking a chance on our young people. There is a place for our young citizens to learn the work ethic on the job, but this legislation will close many doors. I listened very carefully to the debate this week and am still of the opinion that the 6-month youth differential salary rate was most responsible and equitable.

Furthermore, S. 1861 will, I believe, hurt the small businessmen in this country. The present law makes certain exceptions in adherence to the minimum wage for those businessmen who gross less than $250,000. An immediate 25-percent increase in salaries, no matter the employee's age or experience, will certainly mean either higher prices or bankruptcy in many instances. In addition, those establishments which make their product on the premises would have to pay the 25-percent increase, should this bill be signed into law. The local bakery and candy store, often the first to hire the young, will be hard hit, not to mention the local theater owner and other smaller establishments. These represent only a few of the types of businesses that would be affected. To expect small businesses to pay an immediate 25-percent now and a 40-percent increase over the present rate in 14 months seemed terribly irresponsible and I found I could not support such a proposal.

Again, I would like to say that I strongly support an honest fair salary for all workers, but this bill has not taken all matters into consideration—and for that reason I reluctantly voted nay.

THE GASOLINE SHORTAGE

Mr. MUSKIE. Mr. President, Tuesday's edition of the Portland, Maine, Press Herald contains the results of the most recent survey conducted by the American Automobile Association which indicates that the effects of the gasoline shortage in Maine and the other New Englast States seem to be easing. In recent days, I have confirmed this impression through conversations with the Maine Innkeepers Association and the Maine Petroleum Association.

This is heartening news, particularly for a State such as Maine which attracts thousands of tourists each week during the summer months. Vacationers need have no concern that they will not be able to purchase as much gasoline as they desire in New England.

Nevertheless, while an improvement in the gasoline supply situation is indeed comforting to Maine consumers, this fact should not be interpreted as eliminating the need for prompt action by Federal authorities to adopt a more effective policy for equitably distributing petroleum products to wholesalers and retailers throughout the country.

The voluntary allocation program which has been in effect for the past 2 months is inadequate and there is ample evidence that it should be replaced with a mandatory program as soon as practicable.

Mr. President, I would like to cite but three reasons which support this conclusion.

First, the Maine congressional delegation initiated a meeting on June 28 in the Maine Office of Civil Defense with Federal, State, and local officials for the purpose of reviewing our State's experience with the voluntary allocation program. At this meeting, it was made absolutely clear that the voluntary guidelines for serving priority customers such as farmers, fishermen, public safety agencies, et cetera were not being implemented. This is largely because of the failure of the major oil companies to issue any instructions whatsoever to Maine's dealers concerning priority allocations.

Consequently, priority customers are being denied needed products, thereby necessitating formal complaints to State and Federal officials. State officials in particular are frustrated by the fact that representatives of the major oil companies operating in Maine responded to inquiries by stating that they could make no decisions on supply allocations at a State level and that any action would have to be initiated by their "home offices." Federal officials, in turn, are hampered by a lack of manpower and the lack of enforcement powers.

Subsequent to this meeting, I have received letters and reports from individual constituents providing further evidence that local distributors in Maine have received no instructions concerning priority allocations. This is causing a particular hardship for farmers who need prompt action on supply requests if they are to harvest their crops.

Second, looking ahead to next winter's heating oil demand, Maine's fuel oil dealers have still received no firm assurances as to the level of supply they will be permitted to purchase in the coming months. This uncertainty, coupled with the difficulty experienced by State officials in obtaining supply commitment information voluntarily from oil companies, is not a good sign for the future.

Moreover, the independent deep-water terminal operators, upon whom we New Englanders rely for over one-third of our heating oil supply, informed me yesterday that total inventories of No. 2 home heating oil as of July 1 are more than 80 percent below 1972 stocks for the same period—355,000 barrels in 1973 versus 2,410,000 in 1972. This situation exists despite the need to build up stored reserves now, prior to the commencement of the winter heating season.

Third, the Federal Trade Commission has filed complaints against the eight largest oil companies in the country, charging that these companies have engaged in a variety of uncompetitive practices to control and limit the supply of crude oil to independent refiners and marketers. It will be several years before the final outcome of the FTC action, based on a yearlong staff study, is known. But the complaints lend further weight to the contention that the actions of the major oil companies have been an important factor in creating the present situation. Such charges further call into question the effectiveness of any voluntary program for fuel allocations.

Mr. President, the information provided by these three sources—my Maine constituents, the independent terminal operators, and a Federal agency charged with antitrust responsibilities—reinforces my conviction that there must be prompt action by the administration to end its voluntary allocation program and to establish, in its place, a tough mandatory program. Only in this way, will we be able to reduce uncertainty in the coming months, enforce an equitable distribution scheme, and insure that we will have effective procedures for pinpointing problems and for dealing with them promptly.

The voluntary allocation program has failed. We can wait no longer for a mandatory program.

ANDREI AMALRIK

Mr. BROOKE. Mr. President, the young Soviet writer Andrei Amalrik occupies a unique position in the intellectual and spiritual life of the world today. He is the rarest of beings, a philosopher. In a world characterized by too easy change and a passion for the new and novel as far as the West is concerned, and by increasingly deadening conformity and repression of thought and spirituality in the Communist world, Andrei Amalrik stands as a lover of truth. He thinks and writes very much in the same vein as Socrates, for Amalrik also has an ear tuned to an inner voice, the voice of truth and clarity. Imprisonment, sickness or the separation from his wife and friends have not distracted Amalrik from being true to his inner imperative.

However, unlike Socrates, who could stand all night in the extreme cold deep in thought, suffering no ill effects, Amalrik suffers from a heart condition and during his second 3-year imprisonment in a labor camp has contracted meningitis which has permanently affected his health.

Two books by Andrei Amalrik which have been published in the West have resulted in his persecution and imprisonment. "Will the Soviet Union Survive Until 1984?" presents an anguished analysis of factors Amalrik sees as inexorably pushing the faltering, rigid Soviet regime and an increasingly restive Soviet populace to the point of disintegration and collapse, despite their avowedly enormous military might. This is no traitorous book, but is rather the anguished cry of a man who longs to save his nation from the destruction to come. Amalrik would alert the Soviet regime and his fellow countrymen to impending doom.

Balancing the world view of "Will the Soviet Union Survive Until 1984?" is the deeply felt but restrained account of his first exile entitled "An Involuntary Journey to Siberia." In this book Amalrik's underlying concern is for the spiritual welfare of his fellow Russians and this shines forth clearly. He depicts his personal experience as a reflection of past errors on the part of the Soviet leadership and also as a harbinger of things to come. But the concern expressed by Amalrik is always a curative one, for he seeks to prove the malaise affecting not only the Soviet Union but the entire world and to suggest a course of thought and action which could lead back to sanity and renewed spiritual health.

Andrei Amalrik was born in 1938. Because he sent an historical treatise to a Western scholar, he was expelled from Moscow University in 1963. While caring for his late father, an invalid, Amalrik worked at various jobs. In 1965, five of his unpublished plays were confiscated by the secret police and he was imprisoned under a charge of anti-Soviet and pornographic writing and exiled to Siberia as a "parasite." In 1966, he was allowed to return to Moscow with his wife, Gyuzel Makudirova, a talented painter whose works are in much demand by foreign collectors. In 1970, Amalrik was arrested on the charge of "spreading deliberately false fabrications, defaming the Soviet State and public order," and was sentenced to a 3-year term in a labor camp. Although his sentence was completed on May 21, 1973, Amalrik was not released. On the contrary, and despite his illness, he is being held in a labor camp while new charges are being prepared against him.

Mr. Amalrik has many friends and admirers in the United States who would welcome him with open arms. Both Harvard University and Georgetown University have invited him to come to this country to undertake further historical research.

Andrei Amalrik is a world genius who must not be lost in this time of crisis. I therefore urge that every possible effort be made to persuade the Soviet leadership to allow Mr. Amalrik and his wife to come to the United States to study and to provide us eventually with an equally penetrating insight into the strengths and weaknesses of our own people and of the world at large.

EXTRADITION AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, article VII deals with the question of extradition as it relates to the crime of genocide:

> Genocide and other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.
>
> The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

This passage makes two key points: First, that persons would be extradited only "in accordance with their laws and treaties in force" and, second, that a defense against extradition may not be made on the grounds that the crime was a "political" one. It makes clear that the convention would not permit wholesale extradition to take place.

Mr. President, U.S. law explicitly authorizes extradition from the United States to another nation only when there exists an extradition treaty between the two countries. The Genocide Convention is not meant—nor does it purport—to be an extradition treaty. It simply anticipates that, when revising current agreements or negotiating new ones, the United States will include genocide as an extraditable crime.

We would not negotiate such a document unless and until Congress has enacted legislation which would make genocide a crime in the United States. It has been our policy, and that of most other nations, to extradite persons for an offense only if it is a crime in both the country requesting extradition and the country granting it.

Furthermore, when negotiating extradition treaties, our Government takes into consideration what judicial processes are available in the other country to the extradited persons. If a fair trial does not seem to be a realistic expectation, extradition would not take place.

Thus ratification of the Genocide Convention will not open the gates to a rash of extraditions of American citizens to foreign countries where they would not receive due process of law. The convention contains safeguards to prevent such occurrences.

Mr. President, positive action on the recommendation for ratification should be taken now.

WOMEN SHOULD HAVE EQUAL ACCESS TO CREDIT

Mr. DOMENICI. Mr. President, I would at this time like to voice my support for a bill, S. 2191, which is expected to be voted on within the next day or two. I would like to urge the support of my colleagues for this measure.

S. 2101, if passed, would prohibit unfair credit billing practices, improve the administration of the Truth in Lending Act, and prohibit discrimination in con-

sumer credit transactions because of sex or marital status. The first two provisions of the bill are obviously necessary and timely, but I would like to direct the attention of my colleagues to the final provision mentioned in the bill.

Earlier this year I cosponsored legislation introduced by Senator BROCK of Tennessee which would prohibit sex or marital status discrimination by banks and between individuals and would also extend this protection to retail credit accounts. These provisions were incorporated in S. 2101.

Mr. President, I do not assume, nor should anyone reading these provisions assume, that there is an absolute right to credit for either men or women. However, men expect the privilege of credit as an ordinary convenience for engaging in financial transactions. There is no justifiable reason why women should not enjoy the privileges and conveniences afforded to men; there is no justifiable reason why women of equal means should not have equal access to credit. This section of S. 2101 would not mean that women ought to be granted credit because they are women. However, it would insure that women must not be denied credit because they are women.

After studying the testimony presented before the committee, it becomes very clear that there is a prevailing attitude in this country against treating women as equals in the adult world. This prejudice, this discriminating attitude must be changed and I can think of no other approach than through legislation. I do not know if such discrimination in the world of economics was ever valid, but I am very certain that it is out of place today.

Working women have become an essential sector of our working economy. The 1970 census shows that 40 percent of the total labor force—4 out of 10 workers are women. We must insure that as women work, they are guaranteed equal access to the credit economy that working men have always enjoyed.

In the National Commission on Consumer Finance hearings, no evidence was introduced to suggest that women were worse credit risks than men—no matter their marital status. The testimony offered before the committee substantiated this fact. Furthermore, statistics were offered which suggested just the opposite was true. Some banks have even admitted that they have no satisfactory statistics concerning the default rate by sex, yet some banks continue to assume that women are bad credit risks.

I am sure we have heard stories of single women needing a male cosigner—no matter his economic status—when applying for a loan, or of women recently widowed or divorced being denied a credit card because of their new marital status. I am also sure that we would agree that this practice is not sound.

I am pleased this provision has been so quickly reviewed by the committee and am hopeful the bill will be strongly supported. The women in this country have long earned their rights to full credit opportunities. This legislation is merely a long overdue recognition of those rights.

CAPTIVE NATIONS WEEK

Mr. BROOKE. Mr. President, the week of July 15–21 is observed by many as Captive Nations Week, It is appropriate for us to take time out from thoughts of personal, domestic and international problems to reflect upon the fate of peoples forcefully included under the rule of others. I speak here specifically of those nations in Eastern Europe who continue to experience the yoke of oppression. This will be the 15th observance of Captive Nations Week.

The search for freedom and personal dignity has been a continuous one through all the ages of history. It has not lost its capacity to inspire men in our own time.

Many of our ancestors experienced "captivity" in the form of religious, racial, or national discrimination or political subjugation by others. This week is a time to recall their experiences and realize how fortunate we are to have overcome, at least in part, these barriers to true human freedom in our own society.

On June 15, 1973 the Lithuanian-American Community Observed a day of remembrance of the invasion of Lithuania by the Soviet Union. This was a sober occasion for a people who, having once experienced life in a country where freedom is severely restricted, can much better appreciate the privileges of freedom in our society. Unfortunately, the experience of Lithuania has been repeated in numerous other countries during the past several decades.

During this week of meditation and recommitment to the concept of freedom for all peoples, let us remember the plight of those who are unable to experience the liberties we enjoy. For instance, in Eastern Europe the vast majority can neither express their views openly and publicly nor can they receive undistorted information about the world. They hunger for the "freedom of information" we take so readily for granted in this country.

A further right they are deprived of is that of free and open communication and personal contact with loved ones. Many families in these "captive nations" have been involuntarily separated. In many cases little if any hope exists at present that they will be reunited. Family unity, a seemingly inalienable right for us, is only a dream for these individuals.

This week then, let us not only express words of concern but also rededicate ourselves to accepting the responsibilities which accompany the freedoms we enjoy. Let us work more actively to preserve and uphold these privileges and bring that day closer when all mankind will share them with us.

DO WE NEED EXPORT CONTROLS ON FOREST PRODUCTS?

Mr. HUMPHREY. Mr. President, the proposed phase IV regulations announced July 18 specifically exempt the lumber and plywood industry from wage and price controls. The reason given in a White House fact sheet is that—

Price decreases in this sector have been common in recent months, and competitive forces are expected to exert continued restraint on price levels throughout the remainder of the year.

This is recognition of our discussion on July 14 during hearings before the Subcommittee on Foreign Agricultural Policy, concerning export controls on U.S. agricultural commodities. At that time, I pointed out that limitations on log exports were originally based on the need to dampen domestic prices of lumber, but that we had seen lumber prices decline in recent weeks without additional controls. I remain concerned that, as long as the voluntary import restraint agreements with Japan on timber exports seem to be working, we might undermine such a reasonable approach by imposing mandatory controls.

Lumber and plywood prices have dropped dramatically from their peaks in March and early April, when some were advocating restrictions on exports as a means of lowering domestic prices and increasing domestic supply. The fact that the declines—as much as 38 percent in some instances—occurred at the same time that exports continued, Mr. President, certainly questions whether these exports have any significant relationship to the domestic market.

I call attention to a news clipping from the July 19 Journal of Commerce that offers detail on the sharp decline in wood products prices even as exports go on. The article shows that the fears of February when S. 1033 was introduced to set ceilings on log and lumber exports for the next 3 fiscal years, have been proven groundless today.

Overseas markets provide the only other outlet for an industry whose economic history is boom or bust, feast or famine, with more than half of its softwood production tied to the homebuilding industry. We have seen a significant decline in the rate of new housing starts in recent months. There are many forecasts of slower activity during the balance of the year for the wood industry's primary market. With production up and prices down, but with a falling off in homebuilding, this is not a time to foreclose the foreign market, particularly if the facts show that little connection actually exists between export controls and domestic price and availability.

Export trade offers the wood products industry a measure of stability that it must have to maintain mill capacity, to attract investment for modernization and expansion, and to encourage landowners to grow trees. When the bottom fell out of homebuilding in 1970, one more of many downturns in that industry's erratic cycle, a number of mills simply quit. The industry reports even more mills would have shut down if export trade had been denied them. The production capacity that is forcing prices down today would not exist—could not exist—without export markets.

I find no major opposition, either within the wood industry or outside it, to export controls on timber from Federal lands, to protect manufacturers and workers dependent upon Federal timber. A ban on the export of logs from Federal

lands, together with strong provisions against substituting Federal timber for exported non-Federal timber, would assure this protection. Indeed, I understand that this will be recommended by the appropriations committees in the fiscal 1974 appropriations for the Forest Service.

But available facts indicate export restrictions on non-Federal logs and lumber could seriously damage the wood products industry, creating more, not less, difficulty for homebuilders and the Nation's economy. There is no assurance that such restrictions would guarantee an adequate domestic supply of wood products at reasonable prices, the stated goal of S. 1033.

Mr. President, I ask unanimous consent that the news clipping referred to from the Journal of Commerce, Thursday, July 19, 1973, be printed in the RECORD.

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

IN ANTICIPATION OF PHASE IV: "TUMBLING" LUMBER PRICES CITED

(By William Pengra)

PORTLAND, OREGON, July 18.—Principal producers of most of the nation's softwood lumber and plywood cited "tumbling" mill and retail price structures in efforts to forestall expected stringent Phase Four control of their commodities.

Press releases from the Western Wood Products Association here and the American Plywood Association, Tacoma, Wash., almost simultaneously called attention to what the two major forest product groups called a "dramatic" reversal of the rising price patterns which earlier this year brought threat of congressional studies and stringent log export limitation legislation.

Bronson J. Lewis, APA executive vice president said the dramatic decline in recent months "demonstrates that there is absolutely no need for strict Phase Four price controls on plywood." Member plants of his organization expect to produce some 18 billion sq. ft. of the product this year, against nearly 17 billion in 1972.

H. A. Roberts, WWPA executive vice president, said, "price ceilings on products and profit margin limitations in Phase Two destroyed the incentive of manufacturers to produce to full capacity. Phase Three regulations permitted price increases and relaxed profit margin limitations under certain conditions. The result was an increase in production, free interplay of the forces of supply and demand, and price reductions brought about increased supplies."

As if to hint what Phase Four controls might do to supply, Mr. Roberts pointed out that a significant gain in production came into play the month after controls were modified, and lumber prices have declined for three straight months.

"We have long recognized that a free market balances itself and that periods of high prices are inevitably followed by dramatic fall-offs as adjustments occur," he said.

According to leading price reporting agencies, key lumber items have fallen off in price as much as 38 per cent since mid-April when the lumber market peaked. Hemlock-fir 2 x 4s dropped 17 per cent, Douglas fir 2 x 4s 22 per cent, and No. 3 common Ponderosa pine boards dropped 38 per cent. The WWPA claimed retail prices followed mill prices downward, according to Cost of Living Council data.

Noting that critics have advocated limitation of lumber exports as a means of lowering domestic prices, Mr. Roberts said, "lumber exports have continued while lumber prices were declining. This is proof that product exports have little, if any, relationship to domestic lumber price levels. Instead, foreign trade provides lumber operators an outlet in times of low domestic demand. Softwood lumber exports amount to about 3 per cent of U.S. consumption." He added that the U.S. imports about 22 per cent of its domestic consumption.

In Tacoma, Mr. Lewis released copies of his letter to Cost of Living Council Chairman Dr. John Dunlop, urging the council "to avoid action which would be counterproductive to maintenance of plywood production and today's low price levels."

RESOLUTION OF THE ALABAMA STATE LEGISLATURE IN SUPPORT OF S. 1772: THE RED LUNG BENEFITS BILL

Mr. ALLEN. Mr. President, by means of a House joint resolution approved by Gov. George C. Wallace on June 28, 1973, the Alabama Legislature endorsed and urges passage of S. 1772. Senators will recall that this bill is sometimes referred to as the "red lung benefits bill" because it would extend to disabled iron ore miners and the dependents of deceased iron ore miners the same benefits presently provided for victims of black lung disease. The debilitating and often deadly effects of red lung disease are quite similar to those resulting from black lung disease.

The Federal Government has recognized a moral responsibility to compensate victims of black lung disease and the dependents of those who have died from the disease. In a larger sense, Congress has recognized that those courageous men who from tunnels in the earth have opened up the vast mineral resources of our Nation are much like pioneers who throughout the centuries have risked their lives in hazardous ventures to open up for mankind resources beyond the horizons of unchartered oceans and unexplored lands.

Mr. President, our miners are a hearty breed of pioneers—they are the salt of the earth. We owe much of our economic progress to the fruit of their labors. We cannot avoid an obligation to compensate them for disabilities which formerly, in a less enlightened age, were considered occupational hazards voluntarily assumed.

Today we know that black lung and red lung diseases are the result of excessive exposure to microscopic coal or iron ore dust over long periods of time. We know that the disease does not manifest its presence in immediate disability or death, and frequently cannot be detected in time for a lasting cure. The unfinished task for us is to provide compensation for victims of red lung disease.

Mr. President, it is my great privilege to cosponsor S. 1772 with the distinguished senior Senator from Alabama (Mr. SPARKMAN). It will continue to be my privilege to press for its early enactment. With its enactment we will have taken the first step toward fulfilling our obligation to iron ore miners. It is encouraging to me to know that the Alabama Legislature and Governor Wallace have endorsed this bill and by resolution have urged the Congress to pass it and the President to approve it. I request unanimous consent that House Joint Resolution 105, Act No. 71 of the 1973 Legislature of Alabama be printed in the RECORD.

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

H.J. RES. 105

Resolution thanking Senator JOHN SPARKMAN for introduction of Senate bill 1772 which provides aid to iron ore miners with Red Lung Disease and thanking Senator JIM ALLEN for his pledge to support the bill. Also thanking Governor George Wallace for his strong support for this bill and his concern for these citizens of our great state

Whereas, the State of Alabama has been blessed with many natural resources; and

Whereas, these natural resources have played an important role in the development of the industrial potential of our state; and

Whereas, the process of extracting some of these resources for industrial use has caused some of our iron ore miners to be inflicted with red lung disease similar to the black lung disease inflicted in coal miners. Now with the advancement of technology and research and the improvement of mining conditions by U. S. Steel and other mining companies, our citizens will be less and less susceptible to these diseases and hopefully these diseases will be prevented in future years; however, this does nothing to help those who have toiled for years in the past and are currently suffering from lung ailments due to iron ore dust in the mines; and

Whereas, many of the fine citizens of our state, both iron ore miners and widows of iron ore miners, are dependent upon the public because of their disability from red lung disease and they are looking to the government to pass legislation to aid them in their plight brought about by years of labor in our mines; and

Whereas, there have been meetings of iron ore miners for the past four years for the purpose of recognizing victims of red lung disease; and

Whereas, Senator John Sparkman has introduced Senate Bill 1772 which provides aid to iron ore miners with red lung disease or their widows, and Senator Jim Allen has pledged his support to the bill; and

Whereas, Governor George Wallace is very interested in seeing something done to aid these people of Alabama, the fruits of whose labor the entire state has benefited from, and has urged passage of the bill; now therefore

Be it resolved by the Legislature of Alabama, both Houses thereof concurring, That the President and Congress of the United States support and pass Senator John Sparkman's Senate Bill 1772 which provides benefits for iron ore miners suffering from red lung disease and their widows.

Be it further resolved, That copies of this resolution be sent to the President, the Chairman of the Senate Labor Committee, and the Alabama Congressional delegation.

CAPTIVE NATIONS WEEK

Mr. HANSEN. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Colorado.

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

STATEMENT BY SENATOR DOMINICK

In 1959 the Congress unanimously adopted Public Law 86-90 which designated the third week of July each year as Captive Nations Week. At this time, when relations between the United States and the Soviet Union are

improving, it is particularly important that we not forget the 100 million East and Central Europeans living under Communist rule.

These captive peoples have proven their desire for liberty. In 1953 there was the East Berlin uprising, and in 1956 the Hungarians revolted. In 1968 the Czechoslovak freedom movement rose only to be quashed by the Soviet Red Army's invasion of Czechoslovakia in violation of the United Nations Charter. In 1970 there were widespread revolts in Poland's Baltic port cities, and last year three young people burned themselves alive to protest Soviet domination of Lithuania.

In our struggle for peace we must consider the Captive Nation's struggle for liberty. Their desire to be free and independent states "constitutes a power deterrent to war and one of the best hopes for a just and lasting peace," in the words of Public Law 86-90.

The West should use the growing force of negotiations as opposed to confrontation to obtain for the people of the Captive Nations the basic freedoms we enjoy—freedom of speech, freedom of movement, freedom of religion and freedom of immigration. An enduring world peace will not be complete until people of these states are free to determine their own destinies.

PHASE IV

Mr. STEVENSON. Mr. President, the freeze brought us shortages, and phase IV will bring us higher prices.

The shortages are with us today, and will get worse. Hog production is declining, beef production is declining, and fresh fruits and vegetables have disappeared from grocery counters all over the country. The supply of poultry will not increase until next spring, and egg production will not increase until February of next year, but demand keeps right on rising.

The lid has been taken off food prices and they are on the way up. In Peoria, the price of live hogs jumped 8 cents a pound in the past 2 days, and wholesale prices of some key pork products rose 35 percent in 1 day. More increases are on the way.

Beef shortages are beginning to appear, but the administration does not deem them acute enough to warrant action. The freeze is retained on beef products until September 12, nearly 5 months after it was imposed. Because of the lag in beef production, the shortage of this vital source of protein may be with us for years to come.

In today's Wall Street Journal, John A. Prestbo foresees bacon at $2 a pound, up from $1.40; pork chops at $2 a pound, up from $1.50; eggs at $1 a dozen, up from 79 cents; and broiler chickens at $1 a pound, up from 65 cents—all within a few weeks.

Such prices are outrageous, but imminent nonetheless. Mr. Prestbo's article sets forth the kind of inflation phase IV will bring us and the freeze's legacy of shortages and black markets. I ask unanimous consent that his article be printed in the RECORD.

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

AT THE DINNER TABLE, PHASE IV MEANS EATING $2 BACON, $2 PORK CHOPS

(By John A. Prestbo)

CHICAGO.—Here are some probable food prices a few weeks hence:

Bacon, $2 a pound, up from $1.40 now. Pork chops, $2 a pound, up from $1.50 now. Eggs, $1 a dozen, up from 79 cents. Broiler chickens 75 to 80 cents a pound—or perhaps even $1—up from 65 cents.

What's more, consumers will find shortages of many foods, in coming months.

For Phase 4, the food and farm people say, is too little and too late.

They say the food industry needs a year or more to restore to full operation the nation's food-production machinery, which was banked during the price freeze of Phase 3½.

"Phase 4 is a short-term favor to the consumer, in that prices won't go up as much now as they could have," says George W. Koch, president of the Grocery Manufacturers of America, a trade group. "But it's a long-term fraud, because eventually prices will rise far higher than they would have if all ceilings were just taken off now."

Adds Harold B. Steele, president of the Farm Bureau organization in Illinois: "Consumers must remember as Phase 4 begins that the higher food prices they may face have been caused to some degree by the fact that controls have discouraged production of food and that it will be many months before any appreciable increase in some food supplies will be coming to market."

And Agriculture Secretary Earl Butz acknowledged yesterday that beef shortages could pop up in some parts of the country during the next two months because beef prices remain frozen until Sept. 12.

4 PERCENT TO 5 PERCENT PRICE RISES SEEN

Under Phase 4, cost increases (and decreases) of raw agricultural products—except beef—since June 8 can be passed along to the consumer on a dollar-for-dollar basis. On Sept. 12, all cost increases can be passed along for all food products including beef. By contrast, nonfood segments of the economy can pass along all cost increases beginning Aug. 12, and a few industries—lumber, public utilities and contract coal—are exempted from controls altogether.

Supermarket executives say they will begin posting higher prices in their stores on Monday. Overall, predicts the National Association of Food Chains, food prices will increase another 4% to 5% by year-end—on top of a 12% gain already this year.

But prices of some products will zoom much higher, reflecting sharply higher raw-product prices since June 8. Prices of live hogs, for example, have increased by about 25%; at Peoria, the price jumped eight cents a pound in the past two days to a record, and yesterday alone the wholesale prices of key pork products jumped 15% to 35%. Thus, the retail prices of pork products will soon be jumping.

When the ceiling imposed March 29 on beef prices is taken off on Sept. 12, retail price rises of 10 cents to 15 cents a pound are likely on most cuts. Meanwhile, though, shortages and black marketeering could develop, experts warn.

A BLACK MARKET?

"Producers may well sell only the cattle they have to and retain others until after Sept. 12, which will aggravate short supply situations," says Don Magdanz, executive vice president of the National Livestock Feeders Association in Omaha. "Beef under ceiling prices will look good as other prices rise, so there will be strong demand. If there is no corresponding increase in beef prices, the next step may be a black market and under-the-counter dealings."

"We are very fearful that many beef operations will be forced to close and that beef will be diverted to buyers who aren't observing the ceilings," says Herrell DeGraff, president of the American Meat Institute. And Allan Wellman, University of Nebraska livestock economist, figures it may be late 1974 or 1975 before more beef is available at supermarkets.

It could take as long to rebuild the nation's hog herd, which was cut sharply under Phase 3½ when the effective selling price was frozen below the costs of production. "It will be a year or more before hog producers start expanding pig production, and it will be 12 to 18 months before increased pork supplies show up at the retail counter," says an official of the National Pork Council. Cranking up production takes a minimum of 285 days, he says.

"The hog farmer is a little fearful," says C. J. Tempas, president of Green Giant Co. "He's thrown the dice on increased expansion twice and has lost twice, even though this last time it looked like he'd win. I think it will take awhile for him to risk throwing the dice a third time."

Poultry farmers also are expected to wait a month or so before expanding their flocks, which will take six to eight months and won't put increased supplies of chicken meat into supermarkets much before next summer. Egg farmers probably will begin rebuilding their laying flocks soon, but that takes seven months. As a result, "there is no way to produce enough eggs to meet demand for the rest of this year," says Gene Masters, executive vice president of United Egg Producers, an Atlanta-based cooperative.

Bumper harvests this fall would help ease feed costs and spur meat and egg production. But even though crops look good now, "they aren't in the bin yet," one expert notes, "and farmers are likely to be cautious about expansion until we're closer to harvest."

In the dairy industry, "Phase 4 won't stop the decline in milk production, but it should slow it a little," says Ben Morgan, executive vice president of Dairymen Inc., a Louisville-based cooperative that markets milk in 12 Southeastern states. "Shortages this fall are inevitable. We barely made it last year, and now we have 4% greater demand and 3%-4% less production."

Mr. Morgan says Dairymen plan to put through a price increase of about six cents a gallon on Aug. 1—the same increase scheduled earlier that was canceled because of Phase 3½—and more rises are on the way. "If we're going to maintain the productive capacity of the dairy industry, further price increases just have to be forthcoming," he says.

Meanwhile, some food industry executives are complaining that Phase 4 doesn't help them out of their cost-price squeeze. For example, the National Canners Association is unhappy that costs other than those for raw agricultural products can't be passed on to consumers until after Sept. 12. Raw-product costs account for only 25% of the production costs of canned foods, the council says.

"Some canners may simply pack this year's crops but hold back selling any until Sept. 12 when they can retrieve some of their other costs such as for labor and cans," a spokesman says. Inventories of canned fruits and vegetables are at their lowest level since World War II.

"We're worse off than we were before," says Mr. Tempas of Green Giant. "Phase 3½ froze our prices at promotional discount levels for many times, and we haven't had any raw-product increases since June 8. But we will be having other cost increases incurred in harvesting and processing our crops. Now we can't recover those costs until mid-September instead of mid-August."

The inability to pass along other costs will "drastically shrink profit margins" of supermarkets, the National Association of Food Chains says. The average profit in the industry last year was 0.6% of sales, a spokesman says, "and this year we'll probably be down to 0.5%."

Still others in the food business are disturbed by the feature of Phase 4 that allows passing along only the raw product price increases since June 8, at least until Sept. 12. "If this feature holds, many feeds probably won't be manufactured for awhile, because

the big price increases were before June 8, not after," says Oakley Ray, president of the American Feed Manufacturers Association.

"This rule causes a backlog of dislocations to continue for a couple more months," says a spokesman for the Grocery Manufacturers Association, "and it probably will be Oct. 12 before we can actually pass them along because the rules say that from the time increases are proposed we have to give the Cost of Living Council 30 days to turn them down; only if they don't say anything can we put them through."

In the meantime, though, such products as margarine and salad oils made from soybeans, which were in short supply and staged a major run-up in price before June 8, may not be as plentiful as they used to be.

"Every day that these dislocations continue means shorter supplies and higher prices than we otherwise would have had," says the spokesman for the grocery manufacturers.

ANTIPAY INCREASE COSPONSORS

Mr. HANSEN. Mr. President, I am pleased to include the following Senators as cosponsors of Senate Resolution 144, expressing opposition to an increase in salary during fiscal year 1974 for Members of Congress and the judiciary, and top-level employees of the executive branch:

Senator ALLEN of Alabama; Senator BARTLETT of Oklahoma; Senator BIBLE of Nevada; Senator BURDICK of North Dakota; Senator CHURCH of Idaho; Senator CRANSTON of California; Senator CURTIS of Nebraska; Senator DOMINICK of Colorado; Senator GURNEY of Florida; Senator FANNIN of Arizona; Senator HATFIELD of Oregon; Senator HELMS of North Carolina; Senator MCCLELLAN of Arkansas; Senator MCCLURE of Idaho; Senator MCGOVERN of South Dakota; Senator NUNN of Georgia; Senator ROTH of Delaware; Senator TALMADGE of Georgia; and Senator THURMOND of South Carolina.

Mr. President, the citizens of this country have been very patient and understanding these past few months as Federal officials have struggled to deal with economic problems. They have endured sky-rocketing prices, price freezes that prompted shortages of some food items, and continuing inflation. They have cooperated with phase 1, phase 2, phase 3, phase 3½, and now phase 4, of the ongoing program to end inflation and restore equilibrium to our economy. They should not be expected to endure the insult that an increase in pay of top Government officials would represent.

An example of the attitude with which the average citizen views large pay raises for elected officials was witnessed recently in the State of Washington. Time magazine reports that last April, Washington State legislators voted themselves a 193 percent salary increase—from $3,600 to $10,500 for the roughly 90-days per year spent in legislative session.

Also increased were the salaries of the Governor, the Lieutenant Governor and the attorney general.

Says Time:

The bill struck a nerve of Naderian outrage in a Seattle furniture salesman named Bruce Helm, 32.

Mr. Helm organized a successful campaign to place the salary issue on the State ballot in November, gathering nearly 700,000 signatures—six times as many as were needed.

There are a number of people in my State who share Mr. Helm's opinion of pay raises for elected officials at this point, and some of them have written me. I ask unanimous consent that samples of their letters, together with the July 16, 1973, Time magazine article about the proposed pay raises in Washington State, be printed at the conclusion of my remarks.

Mr. President, the American people deserve a great deal of credit and praise for their patience and for their cooperation these past few months as efforts have been made to stabilize our economy. They have been cautioned that in times of economic insecurity, everyone must make sacrifices and "tighten their belts" until the crisis is past. The people have made sacrifices, and they have tightened their belts. Now the Congress must follow their example.

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

HELM'S CRUSADE

Last April, Washington state legislators decided that they were not being paid enough for the roughly 90 days per year they spend in Olympia, the capital. They accordingly voted themselves a 193% salary increase—from $3,600 to $10,560. At the same time, they raised the Governor's pay from $32,500 to $47,300, the Lieutenant Governor's from $10,000 to $22,000, and the state attorney general's from $23,000 to $37,950. A number of other salaries were also raised, the total increases amounting to $1,359,059 annually.

The bill struck a nerve of Naderian outrage in a Seattle furniture salesman named Bruce Helm, 32. When the state supreme court upheld the new law—which incidentally gave supreme court justices a $5,000 annual pay raise—Helm began organizing a campaign to place the salary issue on the state ballot in November. Helm and his friends had only 2½ weeks in which to raise the 117,902 voter signatures necessary to place their initiative on the ballot; similar efforts have required 60 days.

But a certain civic indignation seems to be in the air this summer. Volunteers poured in to help. Families leaving on vacation stopped at Helm's headquarters, his father-in-law's furniture store, to pick up copies of the petition to distribute along their routes. Private pilots crisscrossed the state, dropping off petitions and picking them up. Ham operators set up a communications network to coordinate the drive. The Seattle Times, among others, endorsed the drive against "underhanded raids on the treasury." In some wonder, Helm observed: "This isn't just a grass-roots movement. It goes right down to the sod." By last week's filing deadline, the initiative calling for salary rollbacks had gathered almost 700,000 signatures, nearly six times as many as necessary and equivalent to one-third of the state's registered voters. Olympians, prepare for a wage freeze.

GREEN RIVER, WYO.,
July 16, 1973.

Hon. Mr. HANSEN,
Washington, D.C.

DEAR HONORABLE MR. HANSEN: It is shocking and shameful, when there are so many living on meager incomes, that the Senate would be voting themselves a raise in salary. Vote against it. Attach an amendment on to it that the raise, if passed, be no more than .036% and not be given until July 1974.

We love our country and hate to see it continually going in debt because of so much extravagance in government.

Sincerely,

Mr. & Mrs. JOHN WALKER.

LARAMIE, WYO.,
July 14, 1973.

Hon. CLIFFORD HANSEN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HANSEN: I do believe that you will have the good judgment to vote no on any salary increase for Congressmen. I can hardly believe my ears or what I read since in this time of inflation, the only way it can possibly occur is through a tax increase, now or eventually.

You gentlemen do a good job, but there are not very many who couldn't do as well. I am definitely for a limited number of terms of office for legislators. Why should the President be limited and not Senators and Congressmen?

Where would a pay increase provide any kind of tax relief, more jobs, peace in the world, cost relief, or any other benefit for the people of Wyoming?

It seems to me that this is out of the question. I know there are arguments for it and they are all self-seeking. Please do not reply to this; vote no on any pay increase.

Sincerely,

MERTON E. POWELL.

RESOLUTION OF THE ALABAMA STATE LEGISLATURE REGARDING OUR MISSING IN ACTION IN SOUTHEAST ASIA

Mr. ALLEN. Mr. President, the Alabama Legislature has adopted a resolution which memorializes the President and Congress to do all in their power to secure the release of and information concerning the 1,321 Americans who are listed as missing in action as a result of our military involvement in Vietnam.

The resolution reflects with eloquence and accuracy the sentiments of the people of Alabama in of our Nation. It provides further evidence of the determination of our people not to default in our obligations to the families and loved ones of our men listed as missing in action or to shrink from taking such actions as may be necessary to fulfill our responsibilities to them.

Mr. President, as elected representatives of the people, we can do no less than make clear to the President and to the government of Hanoi that Congress is determined that no stone will be left unturned and no option available to us will be abandoned until every person listed as missing in action is returned to his home or reliably accounted for. This is our goal—our mission, if you will—and in pursuit of this mission let us firmly fix in mind the nature of the enemy with whom we are dealing so that we may know what may be required.

In the agreements entered into with the government of North Vietnam on June 27, 1973, it was clearly provided in article 8, paragraph (b) that:

The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing

in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take such other measures as may be required to get information about those still considered missing in action.

In the subsequent supplemental agreements of June 13, 1973, the same assurances were given in the same language and with an additional proviso that:

For this purpose, frequent and regular liaison flights shall be made between Saigon and Hanoi.

Pursuant to these agreements we have established in Thailand a joint casualty resolution center. However, the North Vietnamese have permitted neither frequent nor regular flights to Hanoi. Neither has it assisted in obtaining information nor has it assisted us in our efforts to determine the location of the bodies of casualties. Instead, Hanoi has permitted only two visits by a four-party military team for the purpose of showing them alleged burial sites of U.S. servicemen. Instead of assisting us in the identification of the bodies, Hanoi has refused to permit any sort of effort on our part to determine that the sites contained bodies of persons missing in action. In addition, the Vietcong in South Vietnam refuses to permit searches in territory under its control. In short, Hanoi has arrogantly and blatantly violated its solemn obligations. Let us not forget this fact—nor let Hanoi forget it.

Mr. President, this shameful situation assumes greater significance when it is considered that in order to get the supplemental agreement of June 13, 1973, the United States agreed to abandon air reconnaissance over North Vietnam and to resume mine clearing operations and to resume talks on economic aid to North Vietnam. It is embarrassing for this great Nation to continue making concessions to Communist aggressors to obtain compliance with the terms of an agreement to assist us in fulfilling a humanitarian mission.

Mr. President, the idea of providing economic aid to North Vietnam was repugnant to me from its inception—it is now unthinkable. Concessions must cease. Congress can control the purse strings to prevent economic assistance, but the executive branch of Government must marshal every resource at its command—economic, diplomatic, and military—to the end that Hanoi shall not be permitted to continue its torture of sustained doubt and uncertainty in the minds of the families who have loved ones listed among those missing in action. More can be done—more must be done—to force cooperation from this callous and unconscionable enemy.

Mr. President, I ask unanimous consent that house joint resolution 61, act No. 38 of the 1973 Legislature of Alabama, be printed in the RECORD.

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

H.J.R. 61

Resolution memorializing the President and Congress to do all in their power to secure the release and information concerning the missing in action in Southeast Asia

Whereas, of the valiant fighting men of the U.S. Armed Services who served their country in Southeast Asia, many of their numbers are still listed as Missing In Action; and

Whereas, North Vietnam has still not divulged true and factual information about the Missing In Action revealing the whereabouts or fate of these men; and

Whereas, the families of these service men have endured undue hardship and have waited for days, months, and years on end in hope of obtaining the return of their loved ones; and

Whereas, it is hard for a person to even imagine the torture that these families must go through day after day, wondering, waiting, and praying for some miracle that will return their son, husband, or loved one; and

Whereas, the suffering of the men who are still imprisoned in Southeast Asia cannot be forgotten, and immediate action must be taken to secure their release; and

Whereas, the most heralded aspect of the Peace Treaty was that North Vietnam promised the release of *all* American prisoners in Southeast Asia and their cooperation in obtaining the fullest accounting of the Missing In Action; and

Whereas, the Communists have merely pretended to meet the terms of the Peace Treaty; and

Whereas, the American people must not forget and turn their back on these patriotic men who have sacrificed for the country more than any person can expect; now therefore,

Be it resolved by the Legislature of Alabama, both Houses thereof concurring, That this legislature urges the President and Congress to do all in their power to secure the release or information concerning the members of the Armed Services listed as Missing In Action.

Be it further resloved, That copies of this resolution be sent to the President and to the members of the Alabama Congressional Delegation and be made available to the families of the Missing In Action and the press.

In witness whereof, I have hereunto set my hand and have caused the great seal of the State of Alabama to be affixed by the Secretary of State, at the Capitol in the city of Montgomery on this the 8th day of June 1973.

MIGRANT FARMWORKERS

Mr. FANNIN. Mr. President, in Arizona we have a very promising program to help migrant farmworkers learn new skills so that they may gain control over their own destiny.

This program is operated by Arizona Job Colleges, Inc. Everyone concerned about the plight of migrant farmworkers should be interested in this project which gives low-income workers the opportunity to help themselves to more productive and satisfying lives.

On July 3, 1973, the Casa Grande Dispatch carried an article describing the excellent work being done under this unique program. I ask unanimous conconsent that this article be printed in the RECORD:

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

AJC DOES ITS SHARE TO BOOST JOBS FOR MIGRANT FARMWORKERS

A butcher, a baker, a candlestick maker—a nursery rhyme everyone associates with childhood dreams about his future in the world of work. For most Americans, the childhood dreams can become a reality, but for some the dreams will remain only fantasy.

Most migrant farm workers have never had a choice of jobs. They were born into the migrant stream and grew up struggling for survival. There was little enough time for dreams of opportunity for education to make those dreams come true.

Arizona Job Colleges, Inc., based in Casa Grande, with resources from the University of Arizona Rehabilitation Center, has attempted to alleviate this problem. Under a $46,000 contract, the university has helped establish an evaluation center at AJC that since February has assisted 150 indigent persons plan new careers.

The clients served by the unit are incoming AJC students and Arizona State Division of Vocational Rehabilitation clients. The AJC students using the center are adults who earned less than $3,200 a year as farm workers.

Hedges' Warehouse, Cottonwood Lane, is the site of the evaluation center. One of four similar operations in the State, the center is coordinated by Dan Curnett and staffed by Sue Curnett, Mike Lesem and Mike Young, all of the university, and by three AJC workers, Chuck Shook, Mary Gobea and Sharon Meehl.

Staff members have done graduate work in rehabilitation at the University of Arizona and at Arizona State University.

Clients are referred to the evaluation unit by AJC counselors or by Division of Vocational Rehabilitation counselors as part of their family rehabilitation training. The students are scheduled for evaluation and transportation is arranged for them.

The evaluation process usually consumes six to eight days.

"Our clients receive a complete assessment of as many factors that would relate to their potential for work placement as possible," Curnett noted.

Each student or client going through the center is given a battery of tests that examines his personality, medical and physical, eye function, intellectual, academic, outside interests and worker traits. The physical testing is performed by the AJC medical staff.

The test results are turned over to the counselors who referred the individuals to the centers. The counselor and the client use the results to assist in decision making and to plan individual job training programs.

"We are a service component in that we only make recommendations and provide information," Curnett stressed. "We do not say what a client should or should not do."

Before the evaluation center became a reality, AJC students were assigned counselors to help them decide what vocational path to follow. No such comprehensive testing or evaluation program, existed, however.

Most AJC students enter the center after they have been accepted into the program and before their training begins.

Shook, now an evaluation technician, was a member of the first AJC graduating class in 1971.

"Had there been an evaluation unit like this when I entered the AJC program more than two years ago I would have made a different and perhaps wiser choice in my vocational training," Shook commented. He said he is sold on the evaluation service and believes it offers a "therapeutic involvement" for clients.

"You don't really know yourself that well before you come here," he added. "The tests you receive help you pinpoint things about yourself. This and the interaction you have with the counselors make for some pretty meaningful information."

Curnett cites an example to support Shook's comment.

"Suppose my test results indicate I could go into auto mechanics after one year of training or into radio-television repair after three years of training. Obviously, I have a choice I can make based on the time I have available to me."

With more families becoming AJC students in coming weeks, an increase largely due to a recent federal grant, the evaluation center

is expanding its facilities at Hedges' Warehouse.

AJC president Gary Bellrichard said he hopes to see the center play a larger role in manpower development of the Cast Grande area. The AJC president added he sees the unit as one feature that makes AJC a unique training program.

Unique or not, the evaluation center provides for many of Pinal County's rural poor a foundation of hope.

"Most people who are referred to us are here because their lives just happened," Curnett summarized. "This evaluation process gives them an opportunity to express long-term desires and to give personal direction to their lives."

SIX-STATE CRISIS CONFERENCE ON FUEL FOR FOOD PRODUCTION HELD IN ST. PAUL, MINN.

Mr. MONDALE. Mr. President, the need for a system of mandatory allocations for fuel becomes more apparent and more pressing each day.

Last Saturday a six-State crisis conference on fuel for food production was held in St. Paul, Minn. At that meeting members of the agricultural community detailed the failure of the current voluntary allocations system to provide assurances that adequate supplies of petroleum products will be available to meet the needs of agriculture. In Minnesota with nearly a 15-percent expansion in acreage planted this year, an assurance of 100 percent of last year's supplies is completely inadequate, even if such a commitment were binding. Shortages of propane, gasoline, and diesel fuel required to produce, process, and market farm products could lead to food shortages and a significant increase in prices to consumers.

Therefore, the conference urged the Congress and the executive branch to move immediately to a mandatory fuel allocation system.

The executive branch has the authority to adopt a mandatory allocations program, and such action must be taken without delay.

As evidence of the severity of the fuel crisis in agriculture, I submit for the consideration of the Senate a message from Cy Carpenter, president of the Minnesota Farmers Union and a copy of the testimony presented by Jon Wefald, commissioner of agriculture for the State of Minnesota.

Mr. President, I ask unanimous consent that these statements be printed in full in the RECORD.

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

ST. PAUL, MINN.,
July 17, 1973.

Senator WALTER F. MONDALE,
Russell Senate Office Building,
Washington, D.C.:

On Saturday, July 14, a six-State crisis conference on fuel for food production was held at Saint Paul.

It was apparent from the testimony heard from farmers, suppliers, food handlers and processors, cooperative and commodity spokesmen, that the fuel shortage has not eased up, but that in fact, the crisis is about to become much more widespread and damaging.

With small grain harvest about to begin, or just underway, some local fuel suppliers have already used up their July allocations and are drawing on August allocations.

No one seems able to give assurances that adequate supplies of propane gas will be available for crop drying, turkey production, and other agri-business uses. There were widespread shortages of propane already in the fall of 1972. Now, it appears that the industry will start out 25 percent short of the volume needed to handle a larger crop. Because of the lateness of the planting season, a larger share of the 1973 crop may need drying.

It was also brought out that the inability of farmers to obtain assurances that supplies of fuel and propane will be uninterrupted has caused uncertainty about future production and that there may well be a cutback in production of turkeys, hogs, and other livestock and poultry products.

It was the consensus of these attending and participating in Saturday's conference that the documentation of the situation, its possible result in a sharp reduction of production, and its impact on consumer supplies and prices should be submitted to the appropriate Federal agencies and to Members of the U.S. House and Senate from the six States; Minnesota, Iowa, Nebraska, North Dakota, South Dakota, and Wisconsin.

Witnesses were most emphatic in terming the present voluntary allocation plan a failure and I subscribe to that viewpoint personally. Although the voluntary allocation plan has helped in some isolated instances, it has given the public an impression that the problem is being adequately handled, while in truth, problems are not being met head on.

The oft-repeated statement that, "Agriculture has a No. 1 priority" is untrue. Agriculture is one of eleven uses on the so-called priority list. When one of our farm supply cooperatives runs out of fuel for its farm patrons and requests help, the only result of having an "agricultural priority" is that the cooperative is given a phone number which can be called to purchase fuel at what appears to us to be approaching black market prices.

The conference urged the Congress and the executive branch to move immediately to a mandatory fuel allocation to assure needed supplies to farmers and the food business.

We are appreciative of your genuine concern about agriculture and our family farm system, and know you will give this your most serious consideration.

A summary of the major points made during the testimony and discussion at the July 14 conference follows by mail. Witnesses included:

Jon Wefald, Minnesota Commissioner of Agriculture. E. W. Smith, vice president, National Farmers Union. Robert Hurner, presenting statement of Senator Walter F. Mondale. Tom Muck, presenting statement of Attorney General Warren Spannaus. Allan Burke, South Dakota Farmers Union. Lowell Gose, president, Iowa Farmers Union. Milton D. Hakel, president, Minnesota Consumers League.

Evan Bosch, president, Kandiyohi County Farmers Union. Melvin Miller, State Representative, Minnesota. M. F. Ophaug, vice-president for merchandising, Lindsay Bros. Co. Roy Munson, executive secretary, Minnesota Turkey Growers Federation. Phil Stocker, vice president for general services, Land O' Lakes, Inc. Leonard O. Lashomb, Minnesota AFL–CIO Federation of Labor. Al Bloomquist, American Crystal Sugar Cooperative and Red River Valley Sugar Beet Producers. Robert Regnell, board member, Morrison County Cooperative, Little Falls.

Norman Larson, president, Minnesota NFO. Vincent Ritter, vice-president, Minnesota Farmers Union. George Kliber, board member, Mid-America Dairymen, Inc. Calvin Johnson, Atwater, Minn. farmer. Vernon Lund, manager, Ortonville Cooperative Oil Company. Russell Anderson, president, Big Stone County Farmers Union, Harlow Berg, president, Swift County Farmers Union. Leo Zimmerman, president, Morrison County Farmers Union. Mrs. Caspar Fiedler, farm wife, Stearns County, Minn.

Statements were filed on behalf of: U.S. Representative Donald M. Fraser, Elton Berck, president, Nebraska Farmers Union, Gilbert Rohde, president, Wisconsin Farmers Union, Robert Handschin, economist, Farmers Union Grain Terminal Association, Associated Milk Producers, Inc., Northern Region, Minnesota Pork Producers Association, Minnesota Public Interest Research Group.

CY CARPENTER,
President, Minnesota Farmers Union.

A STATEMENT ON THE FUEL CRISIS, BY JON WEFALD, MINNESOTA COMMISSIONER OF AGRICULTURE

I am grateful for this opportunity as the Minnesota Commissioner of Agriculture to examine with you the energy crisis confronting our greatest industry—agriculture.

Unfortunately, the crisis is an extremely serious one, and of much greater proportions than I am sure that the general public is aware.

Unless there is quick action to impose mandatory fuel allocations we face a potential national disaster of almost unlimited economic and social consequences.

This is the hour of decision.

Further delay in Washington on action to insure equitable and priority distribution of the nation's fuel stocks could mean the loss of much of this year's farm production . . . bankruptcy for thousands of farmers . . . unemployment for a fantastic number of workers in agricultural service and supply firms and in the food processing industry.

It could mean food shortages and hunger on a degree seldom before experienced in these United States.

As a person with a sense of history, I would have to go back at least 40 years to the post depression dust bowl era to even come close to what we are facing.

We cannot take the time to determine if the present fuel crisis is real or manipulated by big business. We need immediate action.

Real or manipulated, we have significant evidence that fuel supplies are short in Minnesota right now. In fact, we are told the supply is going to be even shorter.

We know, here in Minnesota, that the existing supplies of many of our surviving fuel distributors will be exhausted by July 20th—just one week away—and as of this date they have no assurance of any new allocations from their suppliers.

July 20th appears to be a D-Day in reverse.

That is a very critical date for most of this nation's farmers and consumers.

The small grain harvest usually is fully underway in the midwest on that date.

We have a potential record crop in the fields. But without assurance of adequate fuel, our farmers may not be able to harvest that crop. And if the farmers cannot harvest the crop, consumers face critical food shortages, black markets and sky-high prices, and possible hunger for some.

The problem is far more reaching than we like to think about.

That isn't just this year's food and fibre crop standing in the fields . . . it also represents the bulk of the seed and feed for use next year. Food production, like nuclear fission, is a chain reaction.

Mishandling of the fuel crisis can have the same impact on our economy as a nuclear bomb has on a large city.

Agriculture, its supply and service industries, and processors, must have the top priority on mandatory fuel allocations.

Fully informed of the consequences, I am sure that consumers will support that assignment of fuel priority.

From July 20th on through mid-November the tractors, combines, trucks and grain dryers will be running almost constantly, to harvest and deliver the 1973 grain crop into safe storage and into the marketing and processing channels.

These are four peak months of fuel demand for agriculture.

Minnesota this year has 6.2-million acres of corn, 10 per cent over last year.

We have a record 4.4-million acres of soybeans, 23 per cent greater than the previous high in 1967.

Our wheat crop is forecast at 72.4-million bushels—the biggest Minnesota wheat output since 1902.

Forecasts indicate oats production will be up 12 per cent, barley up 18 per cent, flaxseed up 69 per cent, compared to last year. We're also up in potatoes, sugarbeets and hay. Minnesota farmers have cut back on only two crops, rye by 16 per cent and sunflowers by 19 per cent.

It is going to take millions of gallons of fuel to harvest Minnesota's 30-million acres of field crops—and to then prepare the soil for next year's food production.

But we cannot forget the other fuel and energy needs of the farmer either . . . to pump the water for his livestock and irrigation, to power the augers, elevators, welders, feed mills, silo unloaders.

Livestock farmers also have a tremendous fuel need. Our turkey farmers will, moreover, require more than 30-million gallons of fuel to maintain production of one of the most economical and nutritional meat products in the retail market today. It takes a lot of energy to maintain ventilation and lighting and grind the feed for poultry, beef and pork during these hot summer months. And, we are only two months away from the season of need for auxiliary heating to insure the production of young turkeys, pigs and beef and dairy calves.

Livestock and poultry manure has to be loaded and spread on the fields or otherwise properly disposed of consistent with the state's tough pollution control standards.

Minnesota has been fortunate thus far in having had the foresight and early action by Governor Wendell R. Anderson to counterattack the fuel shortage. Since last October, at the Governor's direction, Civil Defense Director Jim Erchul has done a tremendous job of finding emergency fuel supplies—upwards of 50-million gallons for our farm co-ops.

Agriculture must have the fuel it needs to complete that harvest, if consumers are going to have a continued reasonably priced supply of food.

There is no practical alternative. Agriculture has been mechanized and dependent upon petroleum fuels almost exclusively for nearly 40 years.

We don't have the horses or horse drawn equipment and we most certainly don't have the farmers to accomplish this year's harvest by horse or by hand. Few of the modern farmers have either the technology or the equipment to even pick and husk corn by hand. And with the vastly greater acreages they don't have the time or physical capacity, given the pioneer equipment, to do the harvest by hand.

We're all aware, too, of the difficulty of attracting city folks out to do farm work on a steady basis. About 15 minutes of hay bale loading or manure piling usually satisfies the urbanite's taste for farm chores. And then there is the matter of the minimum wage that would come into play on a massive hand labor harvest of the farm crop. You can imagine what a box of corn flakes or a quart of soybean oil would cost at the grocery store.

Minnesota farmers alone have approximately $2.5-billion worth of crops standing in their fields for this fall harvest. We're the nation's biggest producer of oats, turkeys, butter, non-fat dry milk and processing sweet corn. We're one of the nation's top ten suppliers of green peas, honey, milk, corn, barley, hogs, livestock, soybeans, potatoes, sugarbeets and wheat, as well as the hay and seed crops that figure importantly in livestock and poultry meat and dairy products production.

Minnesota farmers, and their millions of consumers, among this nation's farmers and consumers, cannot afford to leave this year's crops unharvested for lack of fuel.

But this isn't just a local problem or a Minnesota problem. It is a national problem. I understand there are five other states represented here today at this fuel crisis conference—North Dakota, South Dakota, Nebraska, Iowa and Wisconsin.

America must make an urgent decision on how to manipulate the fuel gate in the public interest. It deserves a higher priority than the Watergate.

Without immediate federal imposition of mandatory fuel allocations both farmers and consumers are facing another inflationary price shock.

Our rural fuel distributors report the only assurances of limited fuel supplies beyond this July 20th have been offered at a stiff 30 percent price increase . . . from 28 cents per gallon to 39 and 40 cents per gallon. And those are only the current quotations. If we get into a black market situation in a real shortage, the price could skyrocket several times.

I can't guess what the final impact would be on the consumer, but I can estimate the increased cost of fuel Minnesota farmers need in this production year. Even at the current 30 per cent boost pegged for July 20th, that adds about $50-million to Minnesota's farm production costs. (In 1969 Minnesota farmers paid $107-million for petroleum fuels, plus another $43-million for electrical energy basically produced by petroleum fuels. This year's increased production will require at least 15 per cent more fuel.)

That increased cost should be recovered by the farmer and would ultimately be paid by the consumer.

But under the present hastily and ill conceived federal price freeze, the farmer can't afford to pay 30 per cent more for fuel, because the frozen market on processed and retail products won't allow him to recover the added costs.

So, we aren't going to solve the food shortage threat for consumers by merely rationing petroleum fuels.

Skyrocketing production costs have already placed the farmer in a position where he can no longer afford to generously subsidize the consumer as he has actually done for most of the last 25 years.

And Minnesota farmers are still doing an outstanding job of trying to provide consumers an abundant, high quality and reasonably priced supply of food. This year they have increased planted crop acreage by a whopping 14 per cent over last year. Their investment is at an all time high.

But he can't finish the job without fuel or fair prices.

Food prices should be removed from the price freeze. The Secretary of Agriculture has told his boss the freeze has been a colossal mistake and is threatening to cause a national food shortage.

We need consumer support, too, for the 1973 farm act now awaiting resolve in a Congressional conference committee, to restore decent target price support guarantees on our most essential agricultural crops. This is the best bill proposed in years, and in the free market system that has developed within the past year probably wouldn't cost the taxpayers a penny, while stabilizing or perhaps even reducing our domestic consumer food costs.

As I see it, the target price support guarantee for farmers is as vital as adequate fuel. And he needs the additional guarantee of adjustments both in fuel allotments and in prices measured against production costs. I equate these minimum guarantees as minimum guarantees like the minimum wage for the urban worker and hired farm labor, a fair income guarantee the farmer has all too long been denied.

It is absolutely essential, if we are to solve the food crisis, that the farmer is assured all of the economic tools—top priority for adequate fuel at a fair price, and a guarantee of recovery of his production costs and a modest profit for the food and fiber he sells.

Without these guarantees for agriculture, America is in for serious trouble.

We must support the efforts of our sympathetic Congressmen to solve this problem, and we must be willing to defend them against the unwarranted brickboats of those misguided consumer advocates and political strategists who would protect and solicit the consumer right into bankruptcy and hunger.

"Unless there is quick national action to impose mandatory fuel allocations we face a potential national food disaster of almost unlimited economic and social consequences," Minnesota Agriculture Commissioner Jon Wefald warned today.

Wefald, speaking in St. Paul at a six-state Farmers Union sponsored crisis conference on fuel for food production, said there is serious danger that potential bumper field crops may go unharvested unless farmers are assured adequate fuel supplies immediately.

He said a survey made by the State Civil Defense agency within the past week revealed that many farm fuel suppliers will exhaust current allocations by July 20 and that they have no firm commitments of any new fuel stocks beyond that date.

"This is extremely critical, because we are now moving into the grain harvest season. During the next four months tractors, combines, trucks, elevators and grain dryers will be operating at peak capacity to harvest the bulk of 1973 food and fiber production," Commissioner Wefald explained.

"If farmers are unable to harvest this crop for lack of fuel, at a time when there is a virtual world-wide food shortage, it can mean hunger and shortages on a degree seldom before experienced in these United States," Commissioner Wefald declared.

He added a warning that immediate federal mandatory fuel allocations with top priority will not alone solve the rapidly developing national food crisis.

"Federal government must also roll back fuel prices, stamp out black markets now developing and remove food from the hastily conceived 60-day wage-price freeze.

"Even if the federal government assures farmers fuel, at present price quotations the farmers may not be able to afford to buy it. Our farm co-ops are being told they may be able to buy fuel after July 20, but at 39 and 40 cents per gallon instead of the normal 28 cents. "That is a whopping increase of 30 per cent, and applied to Minnesota's farm energy needs represents an additional $50-million bill for the agriculture industry in this state alone. Under the existing price freeze the farmer has no chance to recover that increase, and he might be forced to let the crops remain in the field," Commissioner Wefald warned.

DELAWARE'S GOVERNOR SUPPORTS OVERSEAS AMERICAN VOTERS

Mr. ROTH. Mr. President, on June 28, 1973, I joined the distinguished senior

Senator from Maryland (Mr. MATHIAS) in sponsoring legislation to insure that qualified voters residing abroad are not denied their right to vote in Federal elections.

The Governor of Delaware, the Honorable Sherman W. Tribbitt, has, by letter, informed me of his support for this proposal. In order that my colleagues may have the benefit of the Governor's comments, I ask unanimous consent that the text of Governor Tribbitt's letter be printed in the RECORD at the conclusion of my remarks.

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

STATE OF DELAWARE,
Dover, Del., June 26, 1973.

HON. WILLIAM V. ROTH, JR.,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR ROTH: Concerning your Bill to enfranchise overseas Americans, I know Delaware already has granted the franchise to citizens of the State who live abroad.

But I firmly believe national legislation is imperative to insure that the right of all overseas Americans to vote will be protected. Otherwise these citizens will suffer taxation without the benefit of direct representation, a clear violation of this country's founding principles.

Your Bill to protect the voting rights of these Americans has my full support, and I hope to learn you are successful in securing its passage.

Sincerely,

SHERMAN W. TRIBBITT,
Governor.

COAL GASIFICATION

Mr. HASKELL. Mr. President, a month ago a Denver-based firm, Stearns-Roger Corp., announced its plans to team up with El Paso Natural Gas Co. to build the Nation's first complex for conversion of coal into natural gas.

In this time of critical energy shortages it is particularly important for this Nation to explore new sources of energy. The gasification of coal has been looked at as an exciting potential source for much needed gas. That potential source will become a reality if the Stearns-Roger plans are successful.

The sponsors of the project hope that it will be fully operative by 1977 and producing commercial high-energy synthetic gas which will be ready for pipeline transmission. The sponsors plan to consume about 9 million tons of coal a year to produce 250 million cubic feet daily of fuel.

The Senate Interior Committee is currently considering S. 425, the Surface Mining Reclamation Act of 1973. That legislation will provide stringent reclamation guidelines and encourage States to enact strip mining legislation. I feel certain those who are building this coal gasification plant will comply with whatever legislation results once they start their mining operation.

Company officials have pointed out the tremendous economic impact this plant will have on those living in the area. The Navajo Tribe, for example, will receive approximately $2 million a year in royalties from coal production.

I ask unanimous consent to have a newspaper article from the Denver Post which details the plans for this venture printed in the RECORD.

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

EL PASO GAS PROJECT: STEARNS-ROGER TO ENGINEER COAL GASIFICATION PLANT

(By Willard Haselbush)

Denver-based Stearns-Roger Corp. has teamed up with El Paso Natural Gas Co. to bring into production by mid-1976 the nation's first complex for conversion of coal into commercial high-energy synthetic gas ready for pipeline transmission.

Progress and goals of the first coal gasification project to materialize out of the national furor over the growing energy crisis were spelled out in Denver last week by J. P. Musick Jr. of El Paso, Tex., manager of community services for El Paso Natural Gas Co.

Musick said Stearns-Roger is providing the engineering expertise and his firm is putting up the more than $420 million it will cost to build the complex capable of producing 250 million cubic feet of cleanburning synthetic gas per day for home and commercial use.

Musick released details of the project now in its early stages on the Navajo Indian Reservation in northwest New Mexico about 35 miles south of Farmington, N.M., some 50 miles from the Colorado state line.

He told members of the Denver Coal Club, an organization of oil company and federal officials studying coal as the largest potential reserve of untapped fossil fuel in the country, that his firm is building the coal-to-gas plant on a 40,286-acre coal lease in what is called the Burnham sector of the Navajo Reservation, southeast of Shiprock, N.M.

In an interview and question-answer period later at the Petroleum Club, Musick said engineering studies now under way, and environmental investigations completed, indicate the new complex will be fully operative in 1977.

He said the coal lease has been proved to contain in excess of 700 million tons of recoverable coal with a sulphur content of only 0.69 per cent and El Paso plans to use it at a rate of about 9 million tons a year to produce 250 million cubic feet daily of new fuel.

Musick said the coal is 150 or less feet under the surface and will be removed by strip-mining, then transported to the nearby gasification complex "for conversion to clean-burning, pollution-free gas."

Areas mined will be carefully refilled and reseeded at once, Musick said. He added that soil studies indicate that dirt beneath the present saline-saturated topsoil is of high quality and could aid the Navajos materially by creating new crop areas.

The synthetic gas manufactured at the Burnham complex will be piped to El Paso's nearby 34-inch San Juan mainline, where it will be comingled with national gas and transported through El Paso's system serving homes and industry in west Texas, New Mexico, Arizona, southern Nevada and California.

Musick says the new man-made gas will arrive none too early.

"As far back as August 1970, El Paso was forced to advise customers it could no longer provide additional natural gas service to the states which will receive the Burnham complex gas," he said. "Our supply deficiency in that area alone is estimated to exceed a billion cubic feet daily by 1976 and we're investigating new imports of liquefied natural gas, stepping up traditional exploration and pushing for the trans-Alaskan pipeline while we build the country's first commercial coal gasification plant to help meet a natural gas shortage of increasingly critical dimensions."

Musick said oil and natural gas firms and numerous government agencies have been experimenting and talking since the 1950s about tapping coal to create gas.

El Paso, he said, will use a method called the "Lurgi process" developed by a West German firm, Lurgi Mineraloiltechnik GmbH. It has been operational at 12 plants in Europe for several months, he said, but El Paso's Burnham complex will be the first U.S. application. The Lurgi Process calls for addition of oxygen and steam to crushed coal under heat and pressure.

According to Musick, the economic and social impact of the multimillion-dollar project—which will be in the construction stage for 30 months—will be gigantic.

"The Navajo Tribe, major beneficiary, will receive about $2 million a year in royalties from coal production and by-products when the complex and mine are fully operational," he said. "The construction phase will require some 3,000 workers and there will be a permanent work force after completion of 941 people with an annual payroll of about $12 million—plus major tax benefits to schools, the state of New Mexico and the federal government."

He said El Paso has agreed as part of the project "to take every reasonable step to guarantee that no part of the area's environment will suffer adverse effect."

BALANCING THE BUDGET

Mr. FANNIN. Mr. President, for several years I sponsored a proposed constitutional amendment which would require the balancing of Federal budgets. This session I served on the joint committee which reported an excellent proposal to require that the Congress act responsibly in appropriating funds. This proposal would encourage the balancing of the budget but without putting the Congress in a straitjacket.

Unfortunately, the Congress has not yet adopted the proposals to bring the needed budgetary reforms. Attempts are being made by the liberal spenders to punch holes in the reforms.

It has long been my contention that excessive Federal spending is the primary cause of inflation. Congress could have put a stop to this, but failed to do so. If any one group in the Nation is to blame for the inflation we now suffer, it is right here in this city and in this complex of buildings.

For the past 2 years President Nixon has been forced to institute economic controls which he and everyone who believes in the competitive, free enterprise system find distasteful. Government controls produce all types of distortions as we have seen demonstrated in recent months.

While I believe that phase IV is the best possible control program, I also believe that it, too, will result in undesirable conditions in certain segments of the economy.

It is essential that we regain control of Federal spending so that we can stabilize our economy and put an end to wage-price controls once and forever.

President Nixon made it abundantly clear that this is one of the keys to his program. I applaud the President for his declaration.

It also was a relief to see that the President and the administration has abandoned the concept of a so-called full-employment budget and the objective now is for a truly balanced budget. To put it mildly, I have been somewhat skeptical of the justification for a full-employment budget.

Mr. President, the Wall Street Journal took note of these developments today in a very good editorial entitled "That Old Time Religion." I say "Amen" to this editorial, and ask unanimous consent that it be printed in the RECORD.

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

THAT OLD TIME RELIGION

We can only applaud Treasury Secretary Shultz' avowal yesterday that keeping federal spending in line with income—not Phase 4—is the key to licking inflation.

The fundamental role of fiscal and monetary policy in keeping prices under controls has been proved in so many nations over so many centuries, we wonder how the maxim got lost in 1971 when the nation was led by false prophets into the economic controls wilderness.

Anyone who bothers to glance at the facts of fiscal and monetary policy would have little doubt as to the cause of our recent inflation. Since 1967 the federal government has run cumulative budget deficits of some $97 billion. The necessity to finance this borrowing out heavy pressure on the Federal Reserve to speed money growth, and since 1967 the money supply has grown at more than 6% annually, more than twice the rate of the 1957–1967 decade. When money grows faster than production, you have inflation.

The key to stopping the inflation is not wage-price controls, leaky dams at best, but holding down the deficits and thus allowing more moderate money growth. Thus Secretary Shultz, wants to balance the fiscal 1974 budget. But by now this task will not be an easy one. Years of fiscal irresponsibility have created some serious political and structural obstacles to that objective.

Let us say at the outset that so far this year Congress has not been as big a barrier to fiscal resonsibility as we had feared it might be. The 1974 budget scorekeeping report put out by the Joint Committee on Reduction of Federal Expenditures in late June didn't look half bad, at least relative to our fears.

In effect, it shows that Congress so far has enacted bills that exceed administration budget targets by only $1 billion. The June 1 administration estimate of the fiscal 1974 budget deficit was $2.7 billion. Congress had enacted bills that would raise that estimate to only $3.7 billion. At this rate, we seem to be dong a great deal better than last year, when Congress had managed to raise an already substantial deficit projection by $11 billion when the October scoreboard was tallied.

On the other hand, the administration goal is a *balanced* 1974 budget, not a $3.7 billion deficit. If the government cannot achieve balance when the economy is running flat out and revenues are pouring in, it hasn't solved the problem—because when the economy is flat out, the inflationary effect of even a small deficit is substantial.

And let us not assume that Congress has entirely sublimated its spending tendencies. A farm bill that would expose the federal treasury to further large direct subsidy payments has enjoyed surprising success—due partly to a coalition between the farm bloc and labor supporters of the bill's food stamp provisions. It hasn't passed yet but it may take a presidential veto to scotch it when all is said and done. Those strong lobbies of Capitol Hill tradition have not succumbed to pleas for fiscal responsibility.

There are also those structural problems we mentioned. According to the Expenditure Committee's estimate, many federal outlays—Social Security and interest on the national debt, for example—have been built into the budget so that a shrinking portion of the budget is controllable by legislation in any one fiscal year. In fact, Congress has effective control over only 28.6% of the budget outlays estimated for fiscal 1974, according to the Committee.

The other potential difficulty for Mr. Shultz—one that administration policy will more directly influence—is on the revenue side of the ledger. There already are signs of a leveling off of economic activity, although those signs are admittedly equivocal at this point. The Commerce Department's leading indicators of economic activity flipped downward in April but back upward in May. However, many economists forecast a second half cooling of the boom. The big imponderable now is whether the effects of the ill-considered June price freeze and the still unknown consequences of Phase 4 might cool the boom faster than anyone intended or desired.

But we agree with Secretary Shultz that this government can indeed balance its budget if it shows sufficient resolve. And the Federal Reserve will then have little excuse, if it ever had any, for continued inflation of the money supply. The Secretary describes the administration's policy as a return to "that old time religion." To further paraphrase the gospel hymn, it was good enough to produce economic stability in the past and it's good enough today.

COMMUNITY SCHOOL CENTER DEVELOPMENT ACT

Mr. WILLIAMS. Mr. President, the concept of community education is sweeping the Nation. The premise is that public schools belong to the people and can be the center for many community activities. Under a community school program, education is no longer interpreted to mean only those formal kindergarten through grade 12 years, but any experience leading to a more successful handling and betterment of the community. The National Community School Association describes it as a "philosophy which repeats the concept of the little red schoolhouse of the previous generation." Thus, community education would reinstall the schools as the community centers and keep the doors open to the public long after 3:30 p.m.

S. 335, which I reintroduced with Senator CHURCH in this Congress, would promote the development and expansion of a community school system in the United States. S. 335, the Community School Center Development Act, was the topic at hearings held recently by the Subcommittee on Education of the Labor and Public Welfare Committee. Witnesses involved in the community education programs in this country testified as to the need for Federal support of such educational programs and demonstrated the effectiveness of existing programs.

Mr. C. S. Harding Mott, president of the Mott Foundation which has made many grants to the cause of community schools in this country, gave knowledgeable testimony about the status of community schools. Mr. Mott said that although the foundation has willingly supported and advocated community schools for years, it was time the Federal Government be "taking on where we as a foundation must leave off." Mr. Mott stated that the Mott Foundation's goal, "To increase the strength and stature of character in individuals and thereby strengthen our free enterprise system of society," would continue as a major activity of the foundation but that the foundation has "arrived at its maximum budget limitation in support of further development of community education." For these reasons, Mr. Mott "applauds proposed legislation (S. 335) in the area of Community Education." Schools, according to Mr. Mott, are the best community education centers because:

They are centrally located in neighborhoods.

They have facilities adaptable to broad community use.

They have human resources necessary for identification and solution of human problems.

They are owned and supported by the public.

They are nonpolitical.

Mr. Mott went on to say, that the "choice of school facilities is quite obvious. It means we can use facilities and staff that already are extant. In other words, we can piggyback on what already is a big investment and thus avoid costly duplication."

Wilbur Cohen, former Secretary of HEW, and now dean of the School of Education at the University of Michigan, brought years of experience in the field of education before the subcommittee.

In his testimony, Mr. Cohen pointed out that:

It is clear that parents and community involvement are necessary for effective education. That is why I support the community school center concept. It enables schools to reach out and work with parents and the community. It enables parents and the community to involve themselves with schools, teachers, pupils, and education.

In a recent Gallup Poll, 57 percent of the respondents said that when some children do poorly in school, the chief blame is due to the children's home life, and only 18 percent on the school or teacher, and 14 percent on the children.

Having participated in the development of more than 100 community schools in Arizona and California, Dr. Tony Carrillo, director of the California Regional Center for Community School Development, described how community schools can improve the quality of life in a community. Dr. Carrillo said:

They can be especially effective in helping minority groups retain their cultural heritage in a pluralistic society while also becoming equipped to join the mainstream of American life.

Dr. Carrillo said that when he looks back to his education, there was a—

Grand Canyon that existed between the school and our community. We all spoke

Spanish, yet our teachers were trying to teach us English with all the instruction in a foreign tongue. They were trying to teach us civics, when most of our parents were not citizens themselves.

Mr. President, a community school system, as described in S. 335, would vastly help to alleviate the barriers many in this country face when struggling for an education. When offered the opportunity of community education, people have utilized it. In 1971 there were 1,920 community schools and over 1.5 million people were involved in those programs. With the assistance of Federal support, this number could be increased to millions.

S. 335, the Community School Center Development Act, would enable us to utilize a part of this country that has failed to meet its capacity. The public school plant in this Nation is the largest investment of public funds spent by our Government. Yet, we allow the doors to be closed in midafternoon and all through the summer when community needs are abundant. The schools are logical locations for activities that involve the community as they are generally centrally situated and accessible to all the community. It has been estimated that the cost of such community education programs would only be 6 to 8 percent higher when a school is operated on an extended basis. This country cannot afford to ignore the benefit we have available to us at such a low, modest cost.

Community school education would benefit the young, middle aged, and elderly of this country. A better educational system could only lead to a better society in which to live.

OFFICE OF FEDERAL PROCUREMENT POLICY

Mr. HATHAWAY. Mr. President, a subject which is gaining increasing attention this year is Government procurement. With the report of the Commission on Government Procurement, the Congress received 149 recommendations on how the $60 billion procurement process could be improved. One of the principal recommendations was for the creation of a Federal procurement policy office responsible for a uniform set of regulations and policies applicable to all procuring agencies in the executive branch.

The distinguished Senator from Tennessee (Mr. BROCK) recently introduced S. 2198, a bill to create an Office of Federal Procurement Policy. I rise in support of this bill, for I see in it the potential for rectifying many of the problems now plaguing the procuring activities of the civilian executive agencies.

The Government Procurement Subcommittee of the Small Business Committee, which I have the privilege of chairing, held hearings on May 17 and 18 of this year to receive testimony on several of the Procurement Commission recommendations, including the one advocating the creation of a central office of procurement policy. In those hearings, we learned firsthand of the difficulties the small business contractors experience in contracting with the Federal Government. Conflicting policies, tediously long and complicated regulations, and the lack of communication with the procurement policymaking bodies were but a few of the many complaints made. To quote from one witness:

Small business simply cannot afford to make its voice heard in the myriad locations throughout the Government where procurement policies are being made.

In summary, the subcommittee found substantial support from the small business community, as well as some Government agencies, for the recommendation creating an office as described in this bill. And, let me add, small business contractors have a major stake in Government procurement. They are currently supplying some $12½ billion in goods and services, or about 19 percent of the total expenditures on procurement.

Thus, Mr. President, I am honored to add my name as cosponsor to S. 2198, and I would urge my colleagues likewise to support this legislation and bring about its speedy passage.

GENERAL REVENUE SHARING— THE FIRST ROUND

Mr. MUSKIE. Mr. President, in March, the Subcommittee on Intergovernmental Relations, in a staff study, concluded that—

The vast majority of cities—both large and small—intended to spend the first round of revenue sharing in the following areas: capital improvements, including streets and roads, public safety, and salary adjustments, including hiring new personnel. Somewhat less frequently mentioned were various forms of tax relief and environmental improvement. Only a small minority of the cities . . . indicated that revenue sharing money would be channeled into social services for the poor or elderly or other forms of recurring expenditures.

These conclusions were reached by the staff on the basis of a questionnaire on Federal grants mailed to more than 2,300 towns and cities in November 1972. Of necessity, the results were tentative and preliminary.

Since March, several other organizations, including the Office of Revenue Sharing, have conducted additional surveys of revenue sharing. This new data on the disposition of the first round of revenue sharing support the preliminary conclusions reached by the subcommittee staff. For a number of reasons, local governments around the country have decided to spend most of the first round of general revenue sharing on capital, nonrecurring projects. This is borne out by another survey limited to the impact of revenue sharing on 25 of the Nation's largest urban parks and recreation departments which has been brought to my attention.

Mr. President, I ask unanimous consent that the "Preliminary Survey of General Revenue Sharing Recipient Governments," prepared by the Office of Revenue Sharing be printed in the RECORD. I also ask unanimous consent that a reprint of an article, "Urban Parks and Recreation Under the New Federalism," written for the May 1973 issue of Parks and Recreation magazine by Dr. Diane R. Dunn and Linda K. Lee be included at this point.

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

PRELIMINARY SURVEY OF GENERAL REVENUE SHARING RECIPIENT GOVERNMENTS

(NOTE.—Figures referred to are not printed in the RECORD.)

I. SUMMARY OF PRELIMINARY REVENUE SHARING EVALUATION SURVEY

Introduction

The Office of Revenue Sharing (ORS) surveyed a sample of recipients of funds under the State and Local Fiscal Assistance Act of 1972 (the Act) to determine:

How they planned for and spent the initial funds distributed to them; and

How they felt about the administration of the program; i.e., whether improvements could be made to ORS operations.

The revenue sharing recipients surveyed included the 50 states and the District of Columbia, 19 Planned Variation Cities, and 715 units of local government of representative levels and sizes. A short questionnaire was mailed to 768 governments. An additional 17 recipients were interviewed in person to gain a perspective on the responses to the mailed questionnaire.

The questionnaires were designed and the survey conducted by staff members of ORS, assisted by Technology Management Incorporated (TMI), a consulting firm familiar with the revenue sharing program. The survey was conducted during April 1973. At the time they filled out the questionnaire, most respondents had received their first two payments (i.e., those sent in December 1972 and in January 1973) but had not yet received the permanent regulations, the April quarterly payment, or copies of any statutorily required report forms.

The recipient governments surveyed were randomly chosen within sample subsets of the total recipient population which were defined by a set of selected criteria, including type and size of government and the per-capita tax effort of the government. The conclusions of this study, therefore, can be viewed as statistically representative of each of the selected subsets. The more general findings and conclusions, while strongly supported by analysis of the individual subsets cannot be interpreted to statistically represent the "average" recipient or a proportionate share of the general revenue sharing funds distributed. Employing the data collected from both the returned questionnaires and the on-site interviews, TMI performed an analysis which generated the findings, conclusions, and recommendations reported below.

Findings

Recipient governments have had little difficulty in incorporating the planning, appropriation, and expenditure of revenue sharing funds into their normal fiscal procedures. Those who did have some difficulty relate their problem to the timing of the receipt of the initial funds.

Twenty percent of the respondents noted an increase in public participation in their planning and budgeting process as a result of revenue sharing. More than 40% anticipate an increase in public participation.

Capital projects and other nonrecurring expenditures were the most frequently men-

tioned uses of revenue sharing funds. Many respondents cited uncertainty regarding the long-term continuity of the revenue sharing program as having been a factor in their choice of capital projects.

Seventy-one percent of the respondents had appropriated some or all of the money received to date. Forty-two percent of the respondents had appropriated all of the money they had received; 29% had appropriated none of it. The average appropriation was 75% of the funds received.

The average amount spent of the funds received by responding governments was 14% as of April 1973; 63% of the respondents had spent no money at all.

Eight percent of the respondents intended to use revenue sharing funds to reduce taxes; 40% said that revenue sharing would allow them to avoid an increase in taxes. Seventeen percent of the respondents said that while property taxes were going up, the amount of the increase would be less because of revenue sharing.

The various government associations and the Office of Revenue Sharing were most frequently cited as sources of information regarding the general revenue sharing program and its operations.

Conclusions

The objective envisioned by the legislation's drafters that the planning for use of revenue sharing funds be relatively easy for recipient governments appears so far to have been achieved. It is possible that the permanent regulations and planned use report forms, issued after most recipients responded to the mail survey, might have the effect of either increasing or decreasing recipient planning difficulties (although the on-site interviews yielded no evidence to support this possibility).

Given that the normal budgeting process was used and that the statutory requirement for publicizing planned and actual use reports had not been implemented at the time of the survey, the increase in public participation, though modest, should be encouraging to those who felt this was an important objective of the program. There are indications that the recipients who experienced increased participation were those who encouraged it; e.g., by holding public hearings.

The initial choice of capital and nonrecurring expenditures by many respondents seems natural, in light of the receipt of two checks so close together with little or no advance notice and the much publicized data problems which produced variations between estimated and actual amounts. Several respondents in the on-site interviews, especially units of local government, commented that financing of needed capital projects was difficult if not impossible through their normal sources of funds. There is no way of learning from this survey whether the emphasis on nonrecurring expenditures will continue in future years.

The Act requires that recipient governments use the same procedures with regard to appropriation and expenditure of revenue sharing funds as are used with respect to their own revenues. Given the relatively short time between the receipt of initial funds and the conduct of this survey, the amounts which respondents said they had appropriated and spent appear realistic, and seem to reflect a sincere effort on the part of recipients not only to comply with the legislation, but to make careful decisions regarding the expenditure of these funds.

Since the setting of tax rates most often involves considerable future planning, and since there was, as of this report, little data upon which recipients could base long-range forecasts of revenue sharing receipts, the modest impact on local taxes is as might be expected. This survey, however, cannot provide any insight as to the future impact on local taxes.

Recommendations

The Office of Revenue Sharing should:

provide to recipients forecasts of their future general revenue sharing allocations;

urge recipient governments to encourage public participation in the local planning and budgeting process;

support the government associations and other public interest groups which are providing assistance to recipient governments;

provide suggested, not required, guidelines and planning aids to governments requesting assistance; and

continue to make reports, notices, and other forms simple for recipients to understand and prepare.

II. DETAILED ANALYSIS OF DATA

Introduction

This section provides a more detailed analysis of the major areas of concern to those involved with the general revenue sharing program. Under each major topic area, the answers to survey questions and highlights of the on-site interviews are drawn together to support the conclusions reported in the Summary. The appendices provide more detail on the design and conduct of the survey itself, a copy of the questionnaire used, and compilations of the data.

Planning for the use of General Revenue Sharing Funds

In general, most governments that responded to the mailed questionnaire had little difficulty in planning for the use of the funds received for the first and second entitlement periods (the checks sent in December 1972 and January 1973). Of the respondents, 75% of the units of local government and 80% of the state governments integrated the planning for the use of revenue sharing funds with their normal financial planning processes. That such a high percentage of respondents was able to blend planning for the use of funds which arrived only four months prior to the survey with "normal" budget cycles speaks well for the flexibility of the local planning process, especially given the considerable variations among governments in fiscal years and the timing of financial planning cycles.

Size and type of responding government had relatively little effect on this indicated ability to integrate planning. Counties with greater than average per capita taxes were least likely to answer that they had integrated planning. Yet 61% of the respondent minor civil divisions with lower than average population and per capita tax claimed that they had integrated planning for the use of revenue sharing with their normal budgeting program.

The interviewed governments were also able to integrate revenue sharing planning with regular budgeting. Although several interviewees explained that some "special" procedures had been employed (as part of the planning process) for the first revenue sharing dollars which came as somewhat of a surprise, no real problems materialized and planning was smoothly integrated. Furthermore, it was explained that these special procedures would disappear since the continual flow of general revenue sharing funds could be anticipated. It was frequently added that reliable forecasts of the amounts of future checks would materially assist the planning process.

The timing of the receipt of funds was frequently indicated in both returned questionnaires and interviews as the major source of difficulty for those who could not integrate planning. Twenty-nine percent of respondent state governments and 43% of respondent units of local government that could not (or did not) integrate planning indicated that the timing factor was the problem. Interviews with governments unable to integrate planning similarly reported that timing of receipt of funds was the primary reason.

In addition, in almost every case, the interviewee governments' fiscal procedures had not changed as a result of revenue sharing, thus illustrating the ease with which the funds had been handled from receipt through the planning process. Furthermore, the interviewees did not anticipate "forced" changes in fiscal procedures as a result of the final ORS regulations. Hence, existing local (and state) procedures were deemed adequate to handle general revenue sharing funds (and are expected to do so in the future), thus making a substantial contribution to the ease with which revenue sharing and normal budget planning were integrated.

Another factor (revealed in the interviews) facilitating the smoothness of planning for the initial funds was that the officials interviewed perceived little or no impact of any provisions of the State and Local Fiscal Assistance Act of 1972 (hereafter referenced as the Act) on their flexibility in using the funds. Some governments interviewed expressed reservations and substantial caution concerning this issue. In general, most governments felt that the latitude built into the general revenue sharing program enabled the application of funds to priority problem areas. This was based on their understanding of the information available prior to the release of the final regulations.

Public participation in recipient Governments' planning processes for general revenue sharing

The legislative history of the Act contains frequent reference to the concern of several legislators, especially in the Senate, that the public and public interest groups be involved to the greatest extent possible in the recipient government's decision as to how funds will be spent. As a result, the Act requires that recipients publish in a local newspaper and advise the local media of the contents of the statutory Planned and Actual Use Reports. At the time the survey was conducted, this important part of the legislation had not been implemented.

In response to a question regarding a change in the level of citizen participation to date (i.e., as of April 1973) as a result of general revenue sharing, 20% of the respondents noted more participation. Generally, more populous areas responded positively to this question. However, 48% of the smaller counties with relatively low per capita tax effort noted an increase. Conversely, an increase in citizen participation was noted in only 3% of the responding cities having a small population and a relatively low tax effort.

On-site interviews yielded a similar mixed set of reactions. One city, for example, established a series of public hearings at which administrative proposals for expenditure of general revenue sharing funds were discussed. Another city included the revenue sharing plans in its usual public hearing on the total budget; no one showed up at the hearing as compared to over 200 attendees the year before. In this case, the property tax rate was being lowered (revenue sharing accounted for a portion of the decrease) as opposed to an increase the year before. A New England town which has a town meeting form of government inserted in the annual budget warrant an article on revenue sharing. The article received the same public scrutiny as all other budget items.

The time at which the survey was conducted is critical because the publicity requirements of the Act had not been implemented. Thirty-nine percent of the survey

respondents said they expected more citizen participation in the future. The expectation of increased public participation was higher than increases reported to date across all cells in the sample, although as earlier, the higher percentages of positive responses tended to be attributable to the larger, more populous areas. The expectation of increased public participation is assumed to be related to the public requirements soon to be implemented. This assumption was reinforced during on-site interviews. An additional point which was suggested during the on-site interviews was that the smaller governments were less familiar with the provisions of the Act; in one case, the interviewer had to explain the publicity requirement. It could be postulated, therefore, that the somewhat less frequent forecast of increased participation by smaller governments may have been in part attributable to their lack of familiarity with the statutory publicity requirements.

Only 9% of respondent state governments noted increases in public participation, and only 14% expected an increase in the future. During the on-site visits and numerous discussions with state government officials, most have indicated that public scrutiny of the state government's budgeting process is already at a very high level and that it would be unusual to expect significant increases attributable to revenue sharing. A contributing factor may be that, as a general rule, revenue sharing represents a smaller percentage (2% to 3%) of a state government's total budget than it does for a unit of local government.

Several conclusions may be drawn from the survey. First, it appears that those governments that experienced an increase in public participation had taken some initiative to encourage such participation. Second, given the large percentage of respondents who were able to integrate planning of general revenue sharing funds with their normal planning/budgeting process, it would seem unusual if a marked increase in public participation over that which normally accompanies the budgeting process were to have taken place. The on-site interviews indicated that most governments had accorded to their revenue sharing plans the same level and method of publicity given to plans for their own funds, and their revenue sharing plans were not the subject for separate publicity. In addition, some of the interviewed officials indicated that the increases in public participation could in part be attributable to the novelty of the program and the national publicity given the initial funds distribution. Public interest due to this activity could be expected to diminish over time. In summary, therefore, the question of sustained increases in public participation in the local decision-making process can only be answered in the future.

The uses intended for general revenue sharing funds

A majority of units of local government responding to the questionnaire indicated that capital expenditures (72% overall) and public safety operating/maintenance expenditures (57% overall) were among the top three priority applications of general revenue sharing funds. This was consistently true regardless of type, size, or per capita tax effort of the respondent government. Fifty-seven percent of the respondent state governments included capital expenditures on their revenue sharing priority lists while 66% included education.

Priority areas least often identified by respondent local governments were library (6% overall) and social services (8% overall) operating/maintenance expenditures. Respondent state governments placed housing and community development (0%) and economic development (0%) at the bottom of their lists.

Questionnaire responses indicated widespread intention to employ the funds received in the first two general revenue sharing checks in capital-type projects; this was strongly reinforced in the interviews. Buildings, roads, sewage lines, and various kinds of new equipment were felt to be sorely needed by officials of nearly all governments interviewed. The expenditure plans of many interviewees give some indication that some respondents to the mail survey may have included capital and other nonrecurring types of planned expenditures under the operating/maintenance categories. Therefore, the actual intent to use the first entitlement period's funds on nonrecurring expenditures may be even more pervasive than directly indicated by the percentage including these expenditures on their priority list.

The interviews also revealed a number of explanations for the apparent emphasis on capital-type applications to date. First, officials of the visited governments reported that capital improvement and development programs have been neglected in recent history. Several factors were mentioned as sources of this neglect. Local government officials cited statutory restrictions on the sources and amounts of funds available to them. A second factor mentioned by several officials was that bond issues for capital outlays for other than educational purposes have been poorly received at the polls in referenda. This was seen as related to frequent and sizable capital requirements for education.

Another reason given for the concentration of funds on capital expenditures was that certain public interest groups whose advice was respected had recommended capital-type uses for general revenue sharing funds to:

Avoid some of the possible difficulties posed by the prohibitions and restrictions of the Act;

Maximize the "visibility" of the use of the funds; and

Avoid the potential requirement to either reduce a service or raise taxes if the general revenue sharing program were discontinued.

This concern over the long-term continuity of the program is the third major explanation for the emphasis on capital uses. Fifty-one percent of the units of local government responding to the questionnaire and 49% of respondent state governments indicated that this uncertainty was a factor in their selection of capital rather than operating expenditure. Larger cities, with both above and below average per capita tax efforts, were even more emphatic in this answer (67% and 72%, respectively) while small minor civil divisions were somewhat less likely to voice this concern (36% of the respondents with above average per capita tax efforts, 38% of those below).

The dominance of capital expenditures is further indicated. For example, 49% of the respondent state governments and 44% of all respondent units of local government reported that they were planning increases in existing program levels in the capital projects area with the revenue sharing funds received to date (April 1973). However, while capital expenditures are the primary choice of many governments, they are seldom the only planned use. In the case of both state and local respondents, 80% indicated that at least some of the funds received to date were planned for operating or maintenance expenses.

This diversity of use with emphasis on capital projects was further documented by the interviews. In every case, while the majority of the available funds might be targeted for a capital project or program, at least some money was planned for operating-type expenses. These expenses typically included at least a small amount of wages and salaries.

One other indicated use of general revenue sharing funds was in projects financed jointly with other governments. Overall, 21% of the respondent units of local government and 40% of respondent state governments answered yes to a question concerning their intentions in this area. While the local figure may seem modest to those concerned with intergovernmental cooperation and regional problem-solving, the significance of the figure increases because cooperative efforts take larger and longer planning efforts than internal program. The interviews provided supportive evidence that, while jointly financed efforts are not presently a widely planned use of funds, this is due primarily to the program's newness and the short time the funds had been available (as of April 1973).

In summary, it can be concluded that capital applications are the most frequent targets for the first entitlement period's funds. However, in most cases, some funds are being spent in noncapital programs across a broad range of categories and programs. Jointly financed projects are presently being planned by some governments, but only time will tell at what level this type of activity will be funded through revenue sharing. The present emphasis on capital expenditures is seen as attributable in large measure to the newness of the program. Many other factors external to the revenue sharing program have also contributed to expenditure decisions made by recipient governments. It therefore remains to be seen whether future applications of revenue sharing funds will follow the present pattern.

Status of general revenue sharing funds as of April 1973

Respondent units of local governments indicated that, on the average, they had appropriated 58% of the funds received in the first two checks as of April 1973. Respondent state governments indicated an average of 48% appropriation. The average figure for units of local government was relatively constant across the various types of population size and per capita tax strata with a range from 33% (the average for small cities with higher than average per capita tax effort) to 74% (the average for small counties with lower than average tax effort). These average figures are, however, somewhat misleading. In general, most governments had appropriated all of the money received or none of it. This is graphically displayed in Figures 1 and 2. In the case of respondent units of local government, 29% of the recipients had appropriated none of the money received. Forty-nine percent of the respondent state governments had appropriated none of the funds.

Recipient governments were also asked to report how much of the funds received to date had actually been spent. Since expenditure normally follows the appropriation process, the responses, as expected, showed the same "all or none" pattern, with less of the funds having been spent than had been appropriated. While the average percentage expenditure of all the respondent units of local government was 14% (with relative consistency across type, size, and tax effort strata), approximately 63% of the responding local governments had spent none of the money received. Figure 3 shows the distribution of funds spent by local governments. Only two respondent state governments had actually spent any of their money.

The interviews confirmed that, as of April 1973, approximately 50% to 60% of the funds available had been appropriated. However, the interviews provided some insight into why these figures should not be higher. First, since it is a requirement of the Act that governments employ all local procedures in spending the funds, the normal administrative process (timing of public hearings, meeting dates for the legislative body, etc.) was applied to general revenue sharing funds. Given that about three months had passed

between the recipients' receipt of their second check and their response to this survey's questionnaire, it would seem unusual if recipients had completed the appropriation process on (let alone actually spent) a higher percentage of the funds received.

Another factor mentioned in the interviews was a note of caution indicated by officials of some governments visited. Even though the final regulations (issued in late April) do not apply to the first entitlement period's funds (which were disbursed under interim regulations), several interviewed officials indicated that they were awaiting arrival of the final regulations prior to any decision-making. If this cautious approach is at all widespread, which is possible given the number of recipients dealing for the first time with the Federal Government, it would affect the length of time between receipt, action, and end use of the funds by many recipient governments.

Overall, it seems that the recipient governments are progressing well in appropriating and expending general revenue sharing funds. It takes time to plan, budget, propose, appropriate, and expend public funds. It will continue to take time in the future. With reliable forecasts of future payments, recipient governments may be able to plan for the expenditure of revenue sharing funds further into the future thereby shortening the time between receipt and expenditure of these funds.

The general revenue sharing funds not yet spent by the governments interviewed had been invested through their standard investment vehicles and in their standard money instruments. The most frequently mentioned instruments were Treasury Bills and Certificates of Deposit. In some cases, the funds have been mixed with available funds in a commingled investment account with proceeds periodically allocated back to the revenue sharing trust account. In other cases, the funds were kept in a segregated investment account or resided in a separate bank account earning standard interest rates. The rates of return earned by the interviewed governments varied between 4.5% and 6.5% per annum.

Anticipated impact of general revenue sharing funds

Given the short time between the receipt of the initial funds and the conduct of this survey and the rate of appropriation and spending of these funds, data on the actual impact of the funds was not available. However, some information was collected on the anticipated and intended effects of general revenue sharing.

Overall, 8% of the respondent recipient units of local government intend to reduce property taxes as a result of revenue sharing's availability, while 17% of the respondent state governments reported similar intent for their income taxes. Among the various sample cells, the only pattern indicated was that minor civil divisions and counties were somewhat more likely to forecast tax reductions than cities.

While these aggregate percentages of respondents planning to reduce taxes are modest, it must be remembered that part of the stimulus for the entire program was the fiscal pressure on local and state governments to raise taxes. In spite of revenue sharing, 17% of respondent local governments indicated their intention to raise taxes, although they indicated that the increases would be smaller than they would have been without revenue sharing.

More frequently, the anticipated impact on local finances of general revenue sharing funds was to enable governments to avoid tax rate increases. This was indicated by 40% of respondent local governments and 63% of large cities (with above average per capita taxes). Twenty-three percent of the respondent state governments reported that revenue sharing funds would forestall income tax increases.

In the interviews, revenue sharing was most often described as having enabled the avoidance of increasing an already heavily burdened property tax or of reaching the statutory limits on the tax rate. Even with revenue sharing funds available, some interviewees cited rising costs and service demands, statutory rate barriers, and voter concern with higher taxes as combining to give their governments a severe financial squeeze.

The interviewees also anticipated the following additional impacts of revenue sharing:

Accelerated trend toward development of planning/budgeting systems and the use of these systems in the planning process;

Increased understanding of local problems on the part of elected or other officials due to citizen participation in revenue sharing planning;

Improved cooperation between units of government due to making funds available for joint projects;

Tax increase avoidance, reducing pressure for emigration from central cities; and

Passage of certain forms of expenditure programs for which no local substitute had been available.

In general, however, these impact statements must be viewed as speculative comments on the part of survey respondents. It will be some time before the true impact of these funds can be accurately measured.

Recipient government sources of information and assistance

The primary sources of information and assistance for units of local government appear to be ORS and public interest/government association organizations; e.g., the National League of Cities, National Association of Counties, National Governor's Conference, and their state and regional subsidiaries and counterparts. The questionnaire returns indicated that, to date, the respondent recipient governments had made little use of paid consultants, accountants, or legal advisors with regard to revenue sharing.

From the interviews, it was learned that the reason local governments have not sought "outside" help was that both ORS and various public interest organizations have provided adequate information. Furthermore, it was frequently explained that the program is simple enough for the recipient governments to "take care of themselves." Several interviewees contrasted revenue sharing with some federal categorical grant programs, in which paid advisors were frequently brought in to assist with the preparation of grant applications, which are not required by the revenue sharing program.

In the interviews, the states were not generally cited as a source of assistance by their subordinate governments. In the case of Massachusetts, however, the State was commended for its aid to local units of government (concerning the revenue sharing program) by the government visited.

Advice to the Office of Revenue Sharing from recipients

The last question on the questionnaire, and usually the last asked in each interview, asked about "other issues" not previously covered. In most cases, there was no reply. Some of the issues raised pertained to the final regulations, which were released after the survey. The remaining replies yielded three specific suggestions to ORS. In paraphrased form it was suggested that the ORS:

Provide to recipient governments forecasts of the amounts they will receive in future periods. Governments of all types and sizes asked for this information to support their planning efforts. Forecasts will greatly facilitate future planning for revenue sharing funds, thereby reducing the time from federal disbursement of funds to local expenditure, especially for those recipients whose budget schedule does not coincide with ORS's quarterly payments.

Provide very general guidelines (on request) to those governments inexperienced with federal funds and who feel they need help. This was not a request for specific requirements or restrictive guidance, but rather for suggestions, ideas, and general advice concerning planning processes, uses of funds, accounting and reporting approaches, and general legal concerns. Corollary suggestions included a newsletter and a step-by-step checklist of the "do's and don'ts" associated with each required report.

Minimize, to every degree consistent with the requirements of the Act, reporting and other paperwork associated with the program. This suggestion was frequent, particularly from small-sized governments of all types. The explanation of the urgency of this request was that most small-sized governments had only small and often parttime staffs available to deal with administration. Excessive detail or volume of reports required by the ORS would, it was suggested, be burdensome in many of these cases.

[From Parks & Recreation magazine, Vol. 8, No. 5, May 1973, pages 22–25, 52–55]

URBAN PARKS AND RECREATION UNDER THE NEW FEDERALISM

(By Diana R. Dunn and Linda K. Lee)

(NOTE.—Dr. Dunn, former NRPA research director, is associate professor and head, Graduate Program in Recreation and Leisure Studies, Temple University, Philadelphia. Ms. Lee is an attorney in Washington, D.C., and a lecturer in law at George Washington University.)

Will it make any difference?

Probably not.

This is the preliminary conclusion drawn from an analysis of estimates by local decision-makers on the allocation of first-year general revenue sharing funds for parks and recreation. Despite the rhetoric of the Administration and its critics, it appears likely that the nation's urban park and recreation systems will be no better off under a system designed to shift decisions about program priorities from federal to state and local governments—but probably no worse off either.

Cities now recreationally disadvantaged with respect to others will remain so; park and recreation departments now lagging behind police and fire departments in their claims on the local treasury will continue to do so; and special population groups who now say they receive only marginal attention from local park and recreation departments will continue to say so.

Based on past experience it should not be difficult to see the logic of this conclusion, but the numbers game being played in Washington, the uncertainty in federal regional offices and the promise of more for everyone under the New Federalism have produced rampant confusion.

Part of the confusion is semantic. Revenue sharing has been used to describe both the general program enacted by the Congress in 1972 and the Administration's proposals to include in four special revenue packages more than 100 categorical, or line item, programs previously funded separately. Three of these, community development, education, and law enforcement assistance, require

legislative enactment. The fourth, manpower, is to be implemented by executive action.[1]

One way to distinguish the various forms of federal assistance being discussed is according to the degree of federal control to be exercised.

General revenue sharing funds are received by the states automatically according to a formula based on population, income and tax effort indicators. No application is required. A substantial portion of these funds pass through to local communities automatically according to a similar formula.

Special revenue sharing funds may be apportioned by formula and may require an application. The funds are to be spent on broad subject areas such as community development or education, but there are no prior federal restrictions on how the funds may be spent within a category.

Block grants do require an application. They may require prior federal approval of projects and some degree of federal control and supervision.

Categorical grants require an application, prior federal approval of specific projects, and supervision right down to the type of building materials to be used, subcontracting provisions, etc.

Definitions under special revenue sharing still must be qualified since none of the proposals have been enacted and available funding for existing programs depends both on their legislative progress and on what is left in the pipeline at the end of the fiscal year.

As of this writing (late March 1973), only the law enforcement assistance special revenue sharing proposal has reached Capitol Hill. The general outlines of community development and education have been spelled out in presidential State of the Union messages, but have not yet been put into legislative language.

Manpower will be implemented through executive action. The President did not request extension of the Emergency Employment Act (PEP), which has focused on providing year-round public service jobs for adults, nor did he seek line item appropriations for the neighborhood youth corps summer recreation or summer youth transportation programs. Some 812,000 jobs were provided through these efforts in 1972, but communities must fund them this year, if they can, through remaining PEP and Manpower Development and Training Act (MDTA) funds for which legislation and $1.3 billion have been requested for 1973, a 20 percent reduction from 1972.

Community development revenue sharing is of most interest to urban park and recreation administrators. On March 8, 1973, the President sent the fifth portion of his State of the Union message to the Congress and discussed his proposed Better Communities Act (BCA). It would provide $2.3 billion a year to "communities to be spent as they desire to meet their community needs." Until it becomes effective, moneys already obligated or programs approved will continue, but no new projects will be authorized (Table 1).

TABLE I.—IMPACT OF PROPOSED SPECIAL REVENUE SHARING ON 4 SELECTED COMMUNITY DEVELOPMENT CATEGORICAL GRANT PROGRAMS

Programs	Estimated outlays[1]			Fiscal 1974 budget request
	1972	1973	1974	
Open space[2]	52	57	70	----------
Neighborhood facilities	23	26	35	----------
Model Cities	500	583	600	----------
Water and sewer facilities	134	130	123	----------

[1] All figures in millions of dollars for calendar year 1973.
[2] This program was terminated on Jan. 5, 1973; no new commitments will be made.

As presented, the BCA is very much like a measure proposed by the President in 1971. A version of it was passed by the Senate in 1972, but the House did not act. The basic provisions of the BCA are as follows:

1. Community development programs, such as open space, neighborhood facilities, model cities, and basic water and sewer facilities, now separately funded categorical programs, are to be included. Although communities may continue to fund these activities, "it would be up to local leaders."

2. BCA funds will flow directly to cities and urban counties on the basis of objective standards, but, according to the President, "in the years immediately following enactment, funds would be used to assure that no city receives less money for community development than it has received under the categorical grant programs."

3. Special provisions are to be included for smaller communities and to define the role of the state governments.

4. Shared revenues under BCA do not need to be matched by local contributions.

5. Recipients "would be required to show the federal government only that they are complying with federal statutes in the way they are spending their revenue sharing money." (Anti-discrimination, federal wage guarantees, and environmental impact statement requirements are included here.)

To assist communities in managing these shared revenues, the President proposes to replace the present Comprehensive Planning Assistance Act (Section 701 of the Housing Act of 1954) with the Responsive Governments Act (RGA) to be funded at a level of $110 million in fiscal 1974. He was critical of the earlier program for placing too much emphasis on planning and too little on budgeting, management, personnel, administration, and information-gathering. "Planning," in the President's words, "has often been irrelevant to the problems and the actual decisions." The RGA would broaden the 701 program and assist state and local governments in "developing reliable information on their problems and opportunities; developing and analyzing alternative policies and programs; managing the programs; and evaluating the results, so that appropriate adjustments can be made."

With problems of legislative language still to be resolved so that the two measures can be sent to Congress for the necessary round of authorization and appropriations hearings and floor enactment, only the most optimistic observer could predict final action by the end of the fiscal year, June 30, 1973. Remaining pipeline funds may lessen the impact of adjustment from categorical to revenue sharing funding, but local park and recreation administrators meanwhile must confront the calendar and budget their activities practically in a vacuum of leadership and information.

As previously noted, general revenue sharing funds are received automatically by states and cities according to formulae. The $30.2 billion included in the 1972 Act for a five-year period amounts to a return of about one percent of federal income tax revenues to the states. Of this total, one-third is reserved to the states without limitation except that it may not be used to provide state matching for remaining categorical programs or for highway construction (due to the existence of the Highway Trust Fund for this purpose). The other two-thirds automatically pass through to the local communities for "ordinary and necessary maintenance and operating expenses" in priority areas including public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor and aged and financial administration. Education is excluded and is the subject of a separate revenue sharing proposal. Ordinary and necessary capital expenditures authorized by law may also be financed through general revenue sharing funds.

As the details of revenue sharing implementation became known, the reaction of state and local officials was mixed. Originally presented as a supplement to existing forms of federal assistance, revenue sharing received the enthusiastic support of many mayors and governors of both political parties, many of whom testified in favor of the general revenue sharing bill in 1972. But despite earlier rhetoric to the contrary, the Administration's 1974 budget justified the elimination of a number of categorical programs on the grounds of the existence of federally shared revenues. The elimination of the urban open space program is a case in point. The budget explanation stated:

"Provision of local open space is a low priority use for federal resources, since benefits accrue to local residents and should be supported from local financial resources. Local communities may continue to provide public open space through the use of federally shared revenues."

To the beleaguered city official, in the absence of the community development special revenue sharing package, this language appears to put open space in direct competition across the board with all local services, not just those within the community development rubric. The Conservation Foundation summed up the reaction of many local officials:

"They like the idea of revenue sharing, with its greater flexibility and local control. But many mayors and others are not so sanguine about the prospect for these programs in competition with other municipal activities over limited funds."

There is also considerable dispute over how much there will be to divide among competing public service needs. Testifying before the hearings of Senator Edmund Muskie's Subcommittee on Intergovernmental Relations, former HUD Under Secretary Robert Wood described the Administration's revenue sharing program "in effect a $10.9 billion withdrawal" terminating or phasing out 112 social action programs previously costing $16.9 billion with an annual $6 billion general revenue sharing program. Boston, he pointed out, would receive $17 million in general revenue sharing in 1973, "while watching at least $100 million cut from programs such as model cities, the public service employees programs, and public housing."

Even though some of these programs would presumably be funded through a combination of new special revenue sharing and/or block grant legislation, pipeline funding and local resources, local officials found themselves nearing the end of the fiscal year with a confusing numbers game going on in Wash-

[1] At the same time, proposed budget reductions in other areas will decrease the amount of funding available to states and cities for parkland acquisition. The Land and Water Conservation Fund, administered by the Bureau of Outlook Recreation of the Department of the Interior, receives some $300 million in revenue annually and matches state funds to acquire parklands. Although the full $300 million was appropriated in 1972 and 1973, the President has requested an appropriation of only $55.2 million for fiscal 1974. It should be noted, however, that the President, while sharply cutting the LWCF, has requested a substantial increase for the National Park Service's program of assistance to the states for historic preservation planning and projects, and for a special bicentennial program to fund "historic projects in those major cities which figured importantly in the movement to independence." This item shows a requested increase from $12.2 million in fiscal 1973 to $19.5 million in 1974.

ington, total confusion at the federal regional office level and a host of unmet needs in every sphere.

In November 1972, Senator Muskie's Subcommittee addressed a questionnaire to 2,359 mayors and city managers to "uncover the pressure points in our current system . . . (and) to discover the attitudes . . . toward different kinds of federal assistance." The senator released an analysis of the information received from more than 700 small- and medium-sized cities and 71 large cities in late February.

As expected, local officials were enthusiastic about the idea of less red tape and restrictions under block grant or special revenue sharing proposals but were "adamant that block grants or special revenue sharing must not be used as an excuse to lower the dollar amounts of federal money going to the cities." A majority of the mayors of the 71 large cities "oppose any cutbacks in categorical aid." Typical comments released by the subcommittee suggested that the goals of revenue sharing and categorical programs are not the same, and stressed that categorical programs are essential to deal with environmental problems transcending political boundaries. This last observation was in line with pleas from the recipients of categorical grants who claimed that federal funds provided the catalyst for experimentation in meeting social service needs.

On the basis of the first questionnaire, subcommittee staff analysts concluded that the priorities selected by the cities, large and small, were:

Capital improvements;
Public safety;
Personnel adjustments.

Programs mentioned less frequently were tax relief and environmental improvement. Only a small percentage reported plans to use general revenue sharing funds for services to the poor and elderly. The subcommittee report added:

"It is important to note that most of the cities responding to the subcommittee survey did so before the Administration's budget for fiscal year 1974 was announced and before local officials had any indication that they were expected to use revenue sharing funds to replace federal money cut back from social programs."

In an effort to supplement the subcommittee's information, another questionnaire probing some of the same areas was sent in late February to parks and recreation administrators in 25 of the nation's 56 cities over 250,000 population. These were the same cities on which a considerable amount of data had already been gathered in connection with the 25-city study of inner-city open space and recreation opportunity conducted by NRPA for HUD.[2] By then, these officials were presumably aware of the President's 1974 budget message and its implications for federally funded parks and recreation programs. Information received from these administrators on four major questions is revealing.

1. *Preferred Types of Assistance?* A small majority of the respondents (56 percent) feel that the federal system of furnishing assistance in the form of categorical grants prevents them from using federal money in a manner which is best for their communities' park and recreation system and prefer federal assistance in the form of block grants or revenue sharing rather than categorical grants. However, more than two-thirds (69 percent) of the respondents believe that parks and recreation will receive less money through revenue sharing than they did through past categorical grants and a full three-fourths of them think it undesirable for the federal government to cut back its categorical grant program.

2. *Capital or Operating?* Park and recreation administrators estimated or verified that 62 percent of all general revenue sharing funds received in their cities will be directed to capital expenditures; only 38 percent will be used for operations.

3. *Who Will Benefit?* Eighty-two percent of the park and recreation administrators believe that the federal revenue sharing funds received by their cities will be spent generally to benefit evenly the entire city population rather than special population groups such as the poor, aged, inner-city, etc. The same percentage of responding administrators also believe that revenue sharing received by their cities and then earmarked for park and/or recreation purposes will be spent generally to benefit evenly the entire population.

4. *How Will Funds Be Spent?* Tables 2 and 3 reflect the estimates of general revenue sharing funds to be allocated (1) among all public services, and (2) among park and recreation budget categories. Tax relief, public safety, and transportation are expected to receive over half of general revenue sharing funds allotted to these cities; parks and recreation together would receive about 13 percent, forecast the respondents. The administrators were asked to predict how general revenue sharing funds tagged for parks and recreation would be spent. As shown in Table 3, capital improvements and land acquisition will receive the lion's share—63 percent. Programs or facilities for special population groups (poor, aged, handicapped, etc.) are not targeted for substantial special help.

TABLE 2.—*Parks and recreation administrators' estimates regarding the expenditure of revenue sharing funds in their cities*[1]

[In mean percentage]

Function:	
Tax relief	21
Public safety (police, fire, code enforcement, etc.)	18
Transportation (streets, mass transit, etc.)	13
New public buildings or renovation	8
Parks	8
Social services for poor, aged, etc.	7
Environmental protection (sewage disposal, sanitation and pollution abatement)	7
Recreation	5
Health	2
Financial administration	2
Libraries	1
Other	8
Total	100

[1] In calendar 1973

TABLE 3.—*Park and recreation administrators estimates regarding the expenditure of general revenue sharing funds allocated for parks and/or recreation in their cities*[1]

Function	[In mean percentage]
Capital improvements	45
Land acquisition	18
Maintenance and operations	15
New personnel	7
Program leadership—services	6
Programs or facilities for special population groups such as the poor, aged handicapped, etc	5
Salary adjustments	3
Other	1
Total	100

[1] In calendar 1973

Thus a paradox occurs, for, while parks and recreation administrators bemoaned past categorical grant spending restrictions which forced spending for hardware, now that more local control is possible, the same pattern will largely be followed. Geneal revenue sharing will apparently cause no about-face.

As noted, these figures are only estimates and represent wide variations. Houston and Kansas City park and recreation administrators expect to receive a full 30 percent of general revenue sharing funds; Phoenix anticipates 37 percent. On the other hand, estimates for Los Angeles, Seattle and Newark are 3, 4, and 5 percent respectively. Atlanta and Boston administrators expect no funds at all for park and recreation purposes. Atlanta had intended to use its entire general revenue sharing allocation for rebates to water-bill payers, and Boston is earmarking 90 percent for tax relief and 5 percent each for public safety and health.[3]

Overall conclusions based on supposedly sympathetic crystal-ball gazing are confusing and very possibly misleading. A review of other trends does not yet seem to warrant the optimism currently expressed by some park and recreation administrators who expect substantial proportions of general revenue sharing funds to flow into their departments. For example, eight administrators report they anticipate between 9 and 37 percent of their cities' entire general revenue sharing funds—or an average of 20 percent for the eight cities. However, only two of these departments exceeded the average 1970 per capita operating expenditures for cities of their size. That is, *local support for public parks and recreation in six of these cities has been below average.*

The mayors' estimates may be more realistic. According to their responses to Senator Muskie's survey, only *one* of these eight cities should anticipate *any* general revenue sharing funds to flow into its park and recreation system.

The opinions of the mayors will be crucial if the Better Communities Act and the transition from categorical grants to the full program of special revenue sharing take place. One of the tenets of the New Federalism, as President Nixon and his aides have described it, is the concentration of control over federal funds in the hands of locally *elected*—not appointed—officials. The funds will be allocated according to community priorities as perceived by those elected officials.

Thus, unless parks and recreation administrators can mobilize their constituencies at City Hall, they not only will not get more from the New Federalism, they may even get less. One thing is clear. For urban parks and recreation systems, the New Federalism is not a new dollar.

REFERENCES

1. *The Budget of the United States Government, Fiscal Year 1974,* U.S. Government Printing Office, Washington, D.C., 1973.

2. *The Budget of the United States Government, Fiscal Year 1974 Appendix,* U.S. Government Printing Office, Washington, D.C., 1973.

3. *C. F. Newsletter: A Report on Environmental Issues,* The Conservation Foundation, Washington, D.C., February 1973.

[2] When Dr. Dunn, project director of the 25-city study, left NRPA to join the faculty at Temple University in 1972, the Association subcontracted the balance of this three-year study to the university in order that it might be completed under her direction. To make the conclusions and especially the recommendations of the project as current and relevant as possible, the opinion of the 25 study-city park and recreation administrators was sought with respect to how new federal actions and trends would affect programs in their cities.

[3] Atlanta attempted to transfer funds for firemen's salaries to its water and sewer fund, lower water rates and return the balance to water users in the form of rebates. The United States District Court (N. Dist. Ga., Atlanta Division) on March 15, 1973, issued a permanent injunction against such use of the general revenue sharing funds. (Mrs Ethel Mae Mathews et al. v. Mayor Sam Massell et al.). According to the Treasury Department this is the first known court challenge to the allocation of general revenue sharing funds.

4. *The Federal Budget and the Cities,* a review of the President's 1974 budget in light of urban needs and national priorities, National League of Cities and The U.S. Conference of Mayors, Washington, D.C., 1973.

5. Edmund Muskie, "Mayors Plead for Social Programs," testimony by 12 mayors on proposed cutbacks in social and human resource programs before the Senate Subcommittee on Intergovernmental Relations, *Congressional Record,* February 21, 1973, pp. 4884–4898.

6. Richard M. Nixon, "State of the Union," on Community Development, *Congressional Record,* March 1, 1973, pp. 6013–6018.

7. Richard M. Nixon, "State of the Union," on Quality of Life in Cities and Towns, *Congressional Record,* March 8, 1973, pp. 6894–6897.

8. *Preliminary Results of the November 1972 Survey on Federal Grant Systems Conducted by The Senate Subcommittee on Intergovernmental Relations,* unpublished, 78 pages, mimeographed.

9. "Title 31—Money and Finance—Treasury, Part 51—Fiscal Assistance to State and Local Governments," *Federal Register,* Vol. 37, No. 209, October 28, 1972.

10. "Washington Scene," *Parks & Recreation,* Vol. 7, No. 12, December 1972, pp. 9–10.

11. Robert Wood, "The Impact of New Federalism Proposals on Higher Education," statement before The Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, February 23, 1973, 12 pages, mimeographed.

PHASE IV

Mr. HANSEN. Mr. President, I would like to take this opportunity to make a few comments about the phase IV economic controls which were just announced. I share the views put forth yesterday by the distinguished minority leader (Mr. SCOTT) that these controls are good because they are seeking to bring supply and demand into balance and because they have been drawn up in such manner so as to present a mechanism for getting us out of a controlled economic society. I do, however, have a few reservations about these controls, and I am pleased that the public will be allowed to comment until July 31.

I would like to reemphasize my concern about keeping a ceiling on the prices of crude oil and other energy products as well as a rollback of crude oil prices to their May 15 level. Even though increased crude oil production per barrel will be exempt from the ceiling as will an equivalent amount of old oil, we are still not providing enough incentive to increase the supply of these products. Imposing such restrictions on the petroleum industry will only further discourage the search for and the recovery of these vital resources and will also further delay a means of resolving our balance-of-payments deficit.

I also have very serious reservations about the continued ceiling on the price of beef and would encourage the lifting of this ceiling before the proposed September 12 date. Americans are now eating more beef today than they did 20 years ago. In 1952 Americans consumed 56 pounds per person per year as compared with 116 pounds per person at the present time. In attempting to meet this increased demand, beef production has increased 285 percent during this same period. And yet, in this same 20-year period, returns to cattle growers have lagged far behind nearly every other commercial and industrial producer. We must now do all we can to encourage a greater production of beef, and by placing price-depressing controls on this product we will only be contributing to the probability of severe beef shortages in the very near future. Therefore, the sooner these controls are lifted, the better it will be for the American consumer. While beef prices may rise temporarily, there will be the necessary encouragement for increased future supplies.

Aside from these reservations, I am favorably impressed with the fact that the President gives assurance of the termination of economic controls in the future—at a time appropriate to preserve incentives for investment and increased production. The sooner these controls can be lifted, the better it will be for both the consumer and economy in the long run.

Also encouraging was the announcement of returning to the concept of a balanced budget—balanced in the sense that tax revenues should at least equal Federal expenditures. I have stated before my own reservations about the validity of the Full Employment budget, especially in these times of great inflationary pressures, and was most pleased by the President's comment that the key to the success of reducing inflation will be to balance the actual budget rather than just the full employment budget. I wholeheartedly endorse the President on this point and pledge to do all I can to help achieve this goal. It will, however, take a joint effort on the part of Congress and the administration to fully realize this objective, and the public should be made aware of this fact. Huge deficit spending by the Federal Government has been the major impetus of this present inflationary spiral, and only after the budget has been brought into balance can we expect the economy to adequately regulate itself through the forces of supply and demand.

Although this is the most powerful Nation in the world, we are not so powerful that we can defy these basic economic concepts of supply and demand. We must realize that we cannot control our economy through Government edict, but instead we must control it through Government responsibility.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday next is as follows:

The Senate will convene at the hour of 10 a.m. After the two leaders or their designees have been recognized under the standing order the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Mr. HUGHES, Mr. FONG, Mr. MCCLURE, and Mr. ROBERT C. BYRD.

Thereafter, there will be a period for the transaction of routine business for not to exceed 15 minutes, with statements limited therein to 3 minutes. At the conclusion of routine morning business the Senate will proceed to the consideration of the unfinished business, H.R. 8947, the bill making appropriations for public works for fiscal year 1974. There is a time agreement thereon. The yeas and nays may occur on amendments, if amendments thereto are offered. In any event, there will be a rollcall vote on final passage of the bill.

On disposition of the public works appropriation bill, the Senate will take up S. 1149, a bill to increase the supply of railroad rolling stock and to improve its utilization to meet the needs of commerce, users, shippers, national defense, and the consuming public. There is a time agreement thereon. It is not anticipated that there will be much of a problem with that bill, but Senators are always ready—just as Boy Scouts are always prepared—for any eventuality, and, in any event, there may be a yea and nay vote on final passage.

Upon disposition of S. 1149, the Senate will take up S. 2101, a bill to amend the Truth in Lending Act to protect consumers against inaccurate and unfair billing practices, and for other purposes. There is some controversy in connection with that bill. Yea-and-nay votes are expected on amendments and on final passage, and presumably the Senate will reach final passage on that bill on Monday. However, that is not necessarily assured.

In summation, there will be yea-and-nay votes on Monday.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ADJOURNMENT TO MONDAY, JULY 23, 1973, AT 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order that the Senate stand in adjournment until the hour of 10 a.m. Monday next.

The motion was agreed to; and at 5:47 p.m., the Senate adjourned until Monday, July 23, 1973, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate July 20, 1973:

DEPARTMENT OF DEFENSE

J. William Middendorf II, of Connecticut, to be Under Secretary of the Navy, vice Frank P. Sanders, resigned.

DEPARTMENT OF THE TREASURY

William L. Gifford, of New York, to be a Deputy Under Secretary of the Treasury, vice James E. Smith.

SECURITIES AND EXCHANGE COMMISSION

The following-named persons to be members of the Securities and Exchange Commission for the terms indicated:

For the remainder of the term expiring June 5, 1976: A. A. Sommer, Jr., of Ohio, vice A. Sydney Herlong, Jr., resigned.

For the remainder of the term expiring June 5, 1977: Ray Garrett, Jr., of Illinois, vice G. Bradford Cook, resigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 20, 1973:

IN THE ARMY

The United States Army Reserve officers named herein for promotion as Reserve Commissioned officers of the Army, under the provisions of title 10, United States Code, section 593(a) and 3384:

To be major general

Brig. Gen. Edward Irving Creed, SSN [redacted].

Brig. Gen. Herbert Marshall Martin, Jr., SSN [redacted].

Brig. Gen. Robert Darwin Partridge, SSN [redacted]

To be brigadier general

Col. Chester Lee Finch, Jr., SSN [redacted] Civil Affairs.

Col. James William Hoerner, SSN [redacted] Infantry.

Col. Jack Jew, SSN [redacted] Medical Corps.

Col. Franklin Lane McKean, SSN [redacted] Field Artillery.

Col. William Allen Newton, Jr., SSN [redacted] Medical Corps.

Col. Ben Lewis Rushing, SSN [redacted] Field Artillery.

The Army National Guard of the United States officers named herein for promotion as Reserve Commissioned officers of the Army under the provisions of title 10, United States Code, section 593(a) and 3385:

To be major general

Brig. Gen. Howard Gurney Garrison, SSN [redacted]

To be brigadier general

Col. Fletcher Clement Booker, Jr., SSN [redacted] Field Artillery.

Col. Max Arnold Creer, SSN [redacted] Field Artillery.

Col. Nicholas Joseph Del Torto, SSN [redacted] Infantry.

Col. William Paul Hurley, SSN [redacted] Infantry.

Col. Robert Earl Johnson, Jr., SSN [redacted] Infantry.

Col. Roger Irvin Martin, Jr., SSN [redacted] Ordnance Corps.

Col. Joseph Henry Ritzenhein, SSN [redacted] Infantry.

Col. James Read Stallings, SSN [redacted] Military Police Corps.

The Army National Guard of the United States officers named herein for promotion as Reserve Commissioned officers of the Army under the provisions of title 10, United States Code, section 593(a) and 3392:

To be major general

Col. Thomas Sams Bishop, SSN [redacted] Infantry.

To be brigadier general

Col. Calvin Hubert Lanning, SSN [redacted] Armor.

Col. Richard Austin Miller, SSN [redacted] Infantry.

Col. Albert Ross Morris, Jr., SSN [redacted] Armor.

Col. Thomas Martin Phillips, SSN [redacted] Field Artillery.

Col. Charles Sumner Reed, Jr., SSN [redacted] Corps of Engineers.

Col. Clyde Chester Wright, SSN [redacted] Field Artillery.

1. The following-named Army Medical Department officers for temporary appointment in the Army of the United States, to the grades indicated, under the provisions of title 10, United States Code, sections 3442 and 3447:

MEDICAL CORPS

To be major general

Brig. Gen. Robert Bernstein, [redacted], Army of the United States (colonel, Medical Corps, U.S. Army).

Brig. Gen. Edward Henry Vogel, Jr., [redacted] Medical Corps, U.S. Army.

To be brigadier general

Col. Kenneth Ray Dirks, [redacted], Army of the United States (lieutenant colonel, Medical Corps, U.S. Army).

Col. George Sawyer Woodard, Jr., [redacted] Medical Corps, U.S. Army.

Col. Spencer Beal Reid, [redacted], Medical Corps, U.S. Army.

Col. William Albert Boyson, [redacted], Medical Corps, U.S. Army.

MEDICAL SERVICE CORPS

To be brigadier general

Col. John Edward Haggerty, [redacted], Medical Service Corps, U.S. Army.

2. The following-named officers for appointment in the Regular Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3284 and 3307;

MEDICAL CORPS

To be major general

Maj. Gen. James Arista Wier, [redacted] Army of the United States (brigadier general, Medical Corps, U.S. Army).

Maj. Gen. Spurgeon Hart Neel, Jr., [redacted] Army of the United States (brigadier general, Medical Corps, U.S. Army).

3. The following-named officers for appointment in the Regular Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3284 and 3306:

MEDICAL CORPS

To be brigadier general

Brig. Gen. Robert Bernstein, [redacted], Army of the United States (colonel, Medical Corps, U.S. Army).

Maj. Gen. Richard Ray Taylor, [redacted] Army of the United States (colonel, Medical Corps, U.S. Army).

1. The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Hal Bruce Jennings, Jr., [redacted] Army of the United States (major general, U.S. Army).

2. Maj. Gen. Richard Ray Taylor, [redacted] Army of the United States (colonel, U.S. Army) for appointment as the Surgeon General, U.S. Army, with the grade of lieutenant general, under the provisions of title 10, United States Code, section 3036.

IN THE NAVY

Comdr. Paul J. Weitz, Jr., U.S. Navy, for permanent promotion to the grade of captain in the Navy in accordance with article II, section 2, clause 2 of the Constitution.

IN THE ARMY

Army nominations beginning Jack H. Leach, to be colonel, and ending Alan P. Smith, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 9, 1973.

Army nominations beginning Earle L. Denton, to be lieutenant colonel, and ending John W. Sagartz, to be captain, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 9, 1973.

Army nominations beginning Donald J. Acker, to be colonel, and ending Willard B. Woodruff, Jr., to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 9, 1973.

IN THE NAVY

Navy nominations beginning James R. Lash, to be lieutenant commander, and ending Timothy H. Meyer, to be ensign, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 9, 1973.

Navy nominations beginning Timothy K. Murphy, to be ensign, and ending Michael B. Sanborn, to be ensign, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 13, 1973.

IN THE MARINE CORPS

Marine Corps nominations beginning Albert W. Campbell, to be colonel, and ending Walter F. Welch, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD and July 9, 1973.

Marine Corps nominations beginning William R. Abele, Jr., to be major, and ending Arthur Yow, Jr., to be chief warrant officer (W-2), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 9, 1973.

HOUSE OF REPRESENTATIVES—*Friday, July 20, 1973*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Keep thy heart with all diligence; for out of it are the issues of life.—Proverbs 4: 23.

Almighty God, our Heavenly Father, mercifully look upon our Nation and come into the hearts of our people that by Thy grace we may be saved from evil ways and may enter the open doors of a better and a higher life in Thy service.

Deliver us from an undue sense of our own importance and lead us to a greater concern about an increase of justice, mercy, and truth in our land.

Deliver us from pride of class, color, or creed, and renew our spirits with truth and love that we may be doers of Thy word and not hearers only.

Draw us closer to Thee and bind us together in the bonds of a common faith and a common devotion that we may be